





43899/c



















A  
S T A T E  
OF THE  
EVIDENCE in the CAUSE

BETWEEN

His Grace the DUKE of HAMILTON, and OTHERS,  
PURSUERS,

AND

ARCHIBALD DOUGLAS, of Douglas, ESQUIRE,  
DEFENDER.

WITH

R E M A R K S.

---

By ROBERT RICHARDSON, D.D.  
PREBENDARY of LINCOLN.

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Mea fuit semper hæc in hac re voluntas & sententia, quemvis ut hoc mallet de iis,  
qui essent idonei, suscipere quam me: me ut mallet, quam neminem.

In Q. CÆCILII DIVIN.

---

L O N D O N,  
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## A D V E R T I S E M E N T.

*DR. RICHARDSON began his enquiry in Sept. 1767. He continued it several months under the belief of some reports which prevailed, that the parties were preparing to apply for a revision of the process in the original Court. In Summer 1768, having previously inserted his remarks on the speeches attributed by Mr. Anderson to the Lords of Session, he left a copy of his papers with his friends in England. They have been printed without any intention to oppose or evade the orders of the House of Lords; but under a due and entire confidence in the justice of that supreme Court: a Court unexceptionably superior to every court of justice in Europe in the unblemished integrity of its Decrees. These Papers are now offered to the Publick; and it is believed they contain a full and impartial account of the merits of this important Cause.*

*The Cause came by way of Appeal before the House of Lords at Westminster, and after ten days spent in hearing it, their Lordships on the 27th of February 1769 reversed the Decree of the Lords of Session in Scotland, thereby confirming to Mr. Douglas his Filiation and his Fortune.*

March 2, 1769.

The PUBLISHER.



A L I S T of the Books, from whence this *State*, &c.  
is taken.

I. Proof in the conjoined Proceffes, George-James Duke of Hamilton, Lord Douglas Hamilton, and their Tutors, Sir Hew Dalrymple, of North-Berwick, Bart. *Pursuers*; against Archibald Douglas, of Douglas, Esq.

II. Proof for Archibald Douglas, of Douglas, Esq. *Defender*: to which is prefixed, his Service, as Heir to the Duke of Douglas.

III. Memorial upon these Proofs, given in to the court of Session in Scotland, on the part of the duke of Hamilton and others.

IV. Speeches of the Lords of Session in the Douglas Cause. Printed for Mr. Almon, in Piccadilly.

V. Speeches of the Lords of Session upon the Douglas Cause. Published by Mr. Anderson, writer at Edinburgh.

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# A D V E R T I S E M E N T.

THE reader will readily observe that the following arguments are drawn from the original depositions, and not from the translations, which were added in haste to this work during the absence of the author, who now humbly desires him to correct the following errors of the press :

Page	Line		Page	Line	
3	19	for none, read <i>no one</i> .	101	36	for <i>left fauxbourg</i> , read <i>left the fauxbourg</i> .
6	2	for <i>his brother</i> , read <i>Sholto</i> .	126	5	for <i>narration</i> , read <i>narrative</i> .
15	4	for <i>was now done</i> , read <i>was done</i> .	129	penult.	for <i>to embark</i> , read <i>pass</i> .
—	5	for <i>further</i> , read <i>farther</i> .	138	8	for <i>youngest</i> , read <i>younger</i> .
16	2	for <i>will serve</i> , read <i>which will serve</i> .	139	16	for <i>Marriend all</i> , read <i>Marriendall</i> .
18	35	dele the parenthesis.	143	8	for <i>di cit dessus</i> , read <i>dit ci dessus</i> .
25	32	for <i>Dumesnil</i> , read <i>Dumont</i> .	149	11	for <i>staid a week</i> , read <i>staid only a week</i> .
27	19	for <i>will they</i> , read <i>they will</i> .	—	ult.	for <i>gros ventre</i> , read <i>un gros ventre</i> .
29	26	for <i>to believe</i> , read <i>believe</i> .	168	17	dele the words <i>in this time</i> .
31	21	after the word <i>July</i> , add <i>and as she thinks on the 10th or 11th of the month</i> .	187	7	for <i>attacks</i> , read <i>attack</i> .
35	5	for <i>their</i> , read <i>the</i> .	190	10	for <i>sunt</i> , read <i>sint</i> .
44	11	for <i>Charlan</i> . The oaths, read <i>Charlan, to the oaths</i> .	205	23	for <i>being married</i> , read <i>her marriage</i> .
48	19	for <i>memoir</i> , read <i>memoire</i> .	—	27	for <i>Mad. Sautrez</i> , read <i>Mademois. Santrez</i> .
49	21	for <i>complain</i> , read <i>complained</i> .	212	1	for <i>forgets</i> , read <i>forget</i> .
—	26	for <i>defcnder of &amp;c.</i> read <i>defender, of &amp;c.</i>	—	13	for <i>one nurse</i> , read <i>one nurse more</i> .
54	10	for <i>de police; &amp; qu' elle</i> , read <i>de police, depuis qu'elle</i> .	215	3	dele the words, <i>It is time now to resume our history</i> .
—	21	for <i>has</i> , read <i>had</i> .	225	14	for <i>reason</i> , read <i>sake</i> .
57	17	for <i>taken</i> , read <i>were taken</i> .	226	19	for <i>their</i> , read <i>this</i> .
—	18	for <i>are the right</i> , read <i>in the fight</i> .	227	5	for <i>find</i> , read <i>fond</i> .
59	5	for <i>ce livre</i> on the 8th of November 1762; it underwent, &c. read <i>ce livre; on the 8th of November 1762 it underwent, &amp;c.</i>	232	18	for <i>undoubted</i> , read <i>public</i> .
69	21	for <i>what the remise now is</i> , read <i>what is now a remise</i> .	—	33	for <i>Her place was about the person of lady Jane and the children, and in what relates to the care of their health and other little concerns. She did her duty, &amp;c.</i> read <i>Her place was about the persons of lady Jane and the children: and in what relates to the care of their health and other little concerns, she did her duty, &amp;c.</i>
—	33	for <i>at any one time; and generally</i> , read <i>at any one time: there were generally</i> .	257	27	for <i>accounts</i> , read <i>account</i> .
73	27	for <i>the Godefrois have said</i> , read <i>Mr. Godefroi has here said</i> .	270	21	for <i>meals</i> , read <i>meats</i> .
77	35	for <i>Sedan</i> , read <i>Torcy</i> .	271	34	for <i>volumes</i> , read <i>columns</i> .
80	21	for <i>premiere</i> , read <i>principal</i> .	293	penult.	for <i>de voir</i> , read <i>de voir faire</i> .
85	22	after the word <i>birth</i> , add <i>this is a ground of presumption in his favour: if the accounts vary, &amp;c.</i>	298	18	for <i>points</i> , read <i>reports</i> .
88	16	for <i>show</i> , read <i>show</i> .	308	37	for <i>a detail of French witnesses</i> , read <i>a detail of names of French witnesses</i> .
—	29	for <i>letts</i> , read <i>lets</i> .	309	7	for <i>least</i> , read <i>last</i> .
90	10	for <i>further</i> , read <i>farther</i> .	314	20	for <i>had</i> , read <i>has</i> .
—	ult.	for <i>he is called</i> , read <i>he calls it</i> .	—	24	for <i>here</i> , read <i>hence</i> .
96	13	for <i>L'eprou</i> , read <i>eperon</i> .	329	18	for <i>Christmas week</i> , read <i>Christmas</i> .
99	31	for <i>notion</i> , read <i>notive</i> .	336	28	for <i>had shewed</i> , read <i>shewed</i> .
—	antepenult.	for <i>the next witness for the defender is</i> , read, <i>The next is a witness for the defender;</i>	343	22	for <i>more</i> , read <i>more</i> .
101	13	for <i>conceal the existence</i> , read <i>conceal the knowledge of the existence</i> .	347	37	for <i>incredibility</i> , read <i>incredulity</i> .
—	31	for <i>Swiss or Genevese</i> , read <i>Swiss or Genevois</i> .	359	ult.	for <i>them</i> , read <i>it</i> .
—	32	for <i>journeymen</i> , read <i>journeyman</i> .	360	24	for <i>possest</i> , read <i>possessed</i> .
121	21	read <i>Sholto was at nurse from the 11th of July 1748, to the 9th of Nov. 1749, within two days of sixteen calendar months</i> .	369	15	for <i>wrote her</i> , read <i>wrote to her</i> .
			370	7	for <i>The facts</i> , read <i>These facts</i> .
			—	21	for <i>to whom they were told</i> , read <i>with whom they were held</i> .



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# INTRODUCTION.

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A STATE of the evidence stands but little in need of an introduction. “*Simplex est veritas & prævalebit.*”—Facts, when they are fairly told, will speak for themselves. The reader has however a right to know, by what means the writer of these papers arrived at that full conviction, which he has ventured to express in the following sheets; and also, upon what principle he has been induced to exhibit his materials in a method so very different from what has been hitherto followed by those who have written on the same subject.

Ist. When he first sat down to consider this great cause, he imagined he should have no other business than to follow the pursuers agents through that train of important discoveries, which they were said to have made with unprecedented industry and success. He had read the *Monitoire*; he respected the authority of the parliament of Paris: he believed the *Monitoire*, and pitied Mr. Douglas. With these sentiments he began to read the depositions, and soon found that a hasty opinion in this cause could hardly be a just one. Prompted at first by curiosity, and encouraged by the request of a friend of the first rank in literature, in philosophy, and in the knowledge of mankind, and soon animated by a desire to throw in his mite to the support of truth, he drew out his remarks to the length and form which the reader now sees.

In composing these remarks he strictly adhered to the following method: He read over all the depositions and papers delivered in as evidence, and carefully marked every the minutest circumstance, by which either the state of the case, or the credit of the witness, could be affected.—From these observations he formed his first judgment; but diffident of himself, he thought it just to examine what had been said in support of the opinion he had rejected: and from hence have arisen those frequent remarks, which are interspersed through these pages, on the pursuers memorial.

Upon the same principle he eagerly applied to a little book printed for Almon, and said, but upon what authority is not  
B known,

known, to contain the speeches of the lords of session. The book had run to a second edition before he heard of it; and it does not appear, that any of their lordships have been offended at the publication; though from the many great inaccuracies in that part of it which has been consulted for these papers, there is great room to hope they are strangers to its contents. The writer of these papers has treated this book with the freedom it merits; but is very far from imputing the errors he has found in it to the respectable persons, whose names are wantonly prefixed to the several speeches.

Seven months after Almon's book had been circulated without offence, another copy of the speeches appeared, said to be accurately taken down, and published by William Anderson, writer, in Edinburgh. The account which Mr. Anderson gives of his performance is in these words: "He made himself fully acquainted with the cause, and while the judges were delivering their opinions, he took down the greatest part of what each of them said. These notes he daily corrected, and enlarged, by memory: not satisfied with this, he got the several opinions revised by those, who were best qualified to correct any errors, or to supply any omissions. So that the present publication may be depended upon as exact and genuine." All that Mr. Anderson is here pleased to say, leads us to think his publication is neither exact nor genuine. How could his memory enable him to correct and enlarge his notes with facts he had never taken down, and probably never heard? And who were these persons who were qualified, after the long vacation, to correct the errors and supply the omissions of a copy taken down in court? Mr. Anderson's book is indeed a collection of speeches totally different, both in argument and style, from that printed by Almon. The style is more diffuse, the sentiments more ambiguous, and, in some of the speeches, the very state of the question is totally changed. The writer of these papers has made the same use of this book as of the former. At the same time, as the chief business of these papers is to examine the real merits of this important cause, and not to divert the attention by unnecessary criticisms, the reader is desired to consider what he sees as a mere specimen of the numerous mistakes in fact, and solecisms in reasoning, with which both the first and second of these books most plentifully abound. Both books are at present suffered to circulate without contradiction; neither of them are acknowledged by the lords of session; neither of them are disavowed; and though they cannot both contain the speeches of the lords whose names they bear, yet



they both help us to see the arts, by which the public is abused on this important subject.

From these materials the work has been formed, which is here presented to the candid reader. The defender's memorial has only been used for dates; and the speeches, which are attributed to those lords who spoke for Mr. Douglas, have never been consulted.—It is hoped, that those truly great and illustrious persons will excuse this omission, when they reflect upon what points the writer of these papers has employed his time, and that the single merit he can boast, is owing to one circumstance; that he has acted independently both of affection and authority throughout this enquiry.

2d. A question of law has been started in this cause, which may be determined in few words.—In England, a child would be put in possession of his estate, as habite and repute.—In Scotland there remains a small rest of the ancient feudal tenures, which requires the *service of a jury*. Mr. Douglas was served heir to his uncle: the pursuers pray, that the service should be reduced. If they do not shew cause why it should be reduced, none will shew it for them, and the person served will maintain his possession.—On the other hand, as the court of session is not a court of appeal, but a court of review, the defender has a right in equity to support the service by fresh evidence, if he thinks fit.

Both the pursuers and Mr. Douglas have severally collected a very large code of positive and circumstantial evidence. The natural division of this evidence is into the *pursuers proof* and *defender's proof*.—The learned advocates in the cause can form no other division; for what can any of them exhibit, but what he believes is a proof of some circumstances advantageous to his client? If this cause depended upon a single question of fact, and if there were but one mode of proof, this division would be as accurate in science as it is expedient at the bar: but since many independent facts are here brought into proof, and since there is an attempt to establish these facts by two several kinds of evidence, positive and presumptive, this simple division is by no means the most commodious for the reader. It has occasioned, that in the memorials many facts are examined twice: and it has occasioned too, that the positive proof has been almost lost amidst that cloud of presumptive reasoning, which the advocates have introduced; till at last a rule has been laid down, to take the evidence, without enquiring into the bare possibility of the thing being otherwise; that is, to exclude what is properly the pursuers proof, and to determine without considering whether they have proved any thing or nothing.

In order to avoid the abuse of setting presumptive argument and positive proof on the same level, the writer of these papers has formed his division entirely on the positive proof. He has examined severally, on what authority we are required by the defender to believe, that lady Jane Douglas was pregnant, was delivered of twins, and recovered : and on the other hand, on what evidence the pursuers would persuade us, that Mr. Douglas and his brother Sholto are the children of other women, and that lady Jane was seen in good health on the 10th of July 1748 ; facts which exclude the possibility of the birth. It was easy to subjoin to the several parts of this state of the evidence such presumptive arguments, as have been formed by either party ; and this has been done.

So far this division is liable to no objection : but it happens, that, in the long enquiry into the conduct of the family, some facts are brought into proof by one party, and some by the other. It was clearly the business of the defender to exhibit an account of lady Jane Douglas during the months of her pregnancy, and recovery ; and yet, even in this period, we find many facts which are introduced by the pursuers : what must be done here ? Must we relate the history of a morning under one proof, and the history of the afternoon under the other ? This would be plainly absurd, and defeat the design for which the facts were introduced ; for they are brought in only to support a presumptive proof, on which no judgment can be formed, unless we examine these facts with relation to their causes and consequences ; and thus we should be led to the necessity of relating every incident twice.

The better to avoid this inconvenience of repetition, as well as to exhibit a just view of the presumptive argument, which is formed from conduct, the whole of the defender's proof is thrown into a chronological order, and makes part of one continued narrative of what happened to sir John and lady Jane, from the first fact which is brought into proof, to the last. The writer of these papers has derived great advantage from this method in his researches after the truth ; and flatters himself it will not be unsatisfactory to the readers. If any one should scruple to call this part the defender's proof, he is at liberty to give it another name, and entitle it a journal of the conduct of sir John Stewart and lady Jane Douglas.

As the pursuers evidence is brought by necessity, the defender's by choice, it is right to consider the former first.



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T H E  
P U R S U E R S  
P O S I T I V E P R O O F.

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*Introduction to the Pursuers Proof.*

**T**H E position in the service is, that lady Jane Douglas was delivered of the defender and his twin-brother, Sholto Thomas, on the 10th of July 1748, in the house of Madame le Brun, Fauxbourg St. Germain à Paris, in the presence of Madame le Brun and her daughter, of Pierre la Marre, man-midwife, of Mrs. Hewit, and of a widow woman who lodged in the house.

The pursuers maintain, that she was not delivered. This negative proposition can only be proved by substituting in its place such other positive assertion, as demonstrates the impossibility of the delivery. There are but three assertions, which can prove this impossibility.

- I. *That the defender and his twin-brother are the children of other women.*
- II. *That lady Jane Douglas was on that day in good health at another place.*
- III. *That some other person; and not the defender, is the child of which she was then delivered.*

This third case is not in proof; but instead of it the pursuers maintain another proposition; which, though it does not directly contradict the possibility of the birth, would, if it were well proved, greatly shake the credibility of it: we ought therefore to add to the pursuers assertions, that there were no such persons as Le Brun and La Marre at Paris in 1748.

These three propositions must be examined in order:

F I R S T



## FIRST ASSERTION OF THE PURSUERS.

That Mr. Douglas and his brother are the children of other women ; or more particularly, that fir John, lady Jane, and Mrs. Hewit, bought or stole Mignon's child in July 1748, and Sanry's child in November 1749, and produced them severally as the children of lady Jane, under the names of Archibald and Sholto.

The case of Sanry's child, though last in time, must be examined first ; because it was first discovered, and led to the discovery of the other.

## S E C T. I.

*A general state of Sanry's case.*

**T**HE circumstances of this story, which remain uncontroverted, seem to be these.

Some time in the winter 1749—50, a gentleman and two ladies came and lodged at the widow Selle's, Croix de fer, rue St. Denis ; the entry in the livre d'inspecteur was of the gentleman's own hand ; Dumefnil the waiter saw him write it : the following words are found in the General Register of Police, for the livre d'inspecteur is lost : “ Novembre 21, 1749, *Duvernés, gentilhomme de Korgue en Irlande avec sa femme & sa sœur*. This gentleman went to Dr. Cotterel, the curate of St. Laurence, either on a Sunday or jour de fête, to ask a list of the parish poor, under the pretext of charity : the list being refused, he applied, either the next day or a day or two after, to the Sisters de la Charité, who engaged a woman named le Gris to conduct him to the poor. After several visits, on three several days, the Sanrys were prevailed upon to part with their youngest son, Joseph : this child was born on March the 19th, 1748, and was, at the time of the enlevement, according to the mother about twenty<sup>a</sup> months old ; according to the sister twenty-one<sup>b</sup> months, and according to the father between twenty<sup>c</sup> and twenty-two months. He was carried in a coach to the Croix de fer, the father and mother attending. <sup>d</sup> They saw their child the next day, and went a <sup>e</sup> second time the day following, when the strangers were gone. <sup>f</sup> Dumefnil says they went off with the child at midnight<sup>f</sup>, and <sup>g</sup> that this midnight was between Saturday<sup>g</sup> and Sunday. The day following

P. P. 286. B.

— 530. A.

— 270. B.

— 275. D.

— 290. G. K.

— 531. 17.

<sup>a</sup> — 290. D.

<sup>b</sup> D. P. 272. F.

<sup>c</sup> P. P. 293. K.

— 294. E.

<sup>d</sup> — 294. H.

<sup>e</sup> — 294. K.

<sup>f</sup> — 285. H.

<sup>g</sup> — 286. G.

following the discovery of the fraud, the father went to St. — 295. A.  
 Germain's, (where Duvernés had told him he had a house) but — 286. I.  
 found nothing, and returned at night. By the advice of Dumef-  
 nil he set out (eight or ten days after) with his son-in-law Thomas D.P. 271. E.  
 Goube, and his son Jean Sanry, and searched for his child through — 272. A.  
 the maritime towns of France. He returned at the end of six  
 months, having discovered nothing.

As soon as the news of the enlèvement reached the ears of the  
 vigilant curate of St. Laurence, he sent for Madame Sanry,  
 and having heard her account of it, promised to write to the  
 lieutenant de police; which he did. There is no copy of his  
 letter extant, but notice is taken of it in two books of police;  
 the first is called *Le Regître de Renvoys*, and contains the follow-  
 ing entry: “ \* 10 Janvier 1750. Lettre du curé de St. Laurent, P.P. 273. E.  
 “ au sujet d'un nommé Duvernay, qui à enlevé l'enfant d'un  
 “ nommé Sanry, sous prétexte de le mettre en mains d'une dame  
 “ de condition, qui le feroit élever; il à donné une fausse  
 “ adresse.” <sup>h</sup> Mr. Horque d'Hamecourt, late secretary, attests, <sup>h</sup> D.P. 270. F.  
 that the entry was made by him, and that the letter was received by  
 Mr. Berrier, then lieutenant-general of the police<sup>i</sup>, on the morning <sup>i</sup> — 271. C.  
 of the 10th of January, 1750; <sup>k</sup> Mr. Hochet de la Terrie, present <sup>k</sup> P.P. 274. B.  
 secretary, who produced the book, observes, that this article was  
 sent to Mr. Chaban, then one of the premiers commis; accord-  
 ingly, having searched for it in Mr. Chaban's department, he found an  
 entry in another book, in the office of one of his clerks; this en-  
 try is of this same date, “ 10 Janvier, 1750,” and contains only — 274. H.  
 these words, “ Lettre de Mons<sup>r</sup>. le curé de St. Laurent contre un  
 “ sieur Duvernay, qui à subtilisé un enfant †.” From this book it — 274. K.  
 appears, that the care of the enquiry was committed to Mr. Pouf- — 274. L.  
 fot, an inspecteur of police; but it no where appears, that Mr.  
 Pouffot made any return; and thus the affair ended.

These seem to be all the circumstances, in which the parties  
 agree, necessary to our understanding the litigated points. The  
 poor people have never since seen or heard of the persons, who  
 took away their child. The application of the story to sir John  
 Stewart, lady Jane, and Mrs. Hewit, rests on these three parti-

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\* “ January 10. 1750. A letter from the curate of St. Laurent, on the subject of one  
 “ called Duvernay, who has carried away the child of one Sanry, under the pretext of  
 “ putting him in the hands of a lady of condition, who would educate him. He gave a false  
 “ address.”

† “ A letter from the curate of St. Laurence against one Duvernés, who carried away  
 “ a child by stratagem.”



culars, which at best form but a presumptive evidence of the lowest class, undoubtedly inadmissible in a criminal process.

- I. *The similitude of persons, manners, and circumstances.*
- II. *The resemblance of Sholto and Joseph Sanry.*
- III. *The coincidence of the enlevement with the time when sir John Stewart, &c. went to Paris to fetch Sholto.*

Mr. Andrew Stuart has some where well observed, “ that there  
“ are some circumstances in this story so ludicrous, that they are  
“ enough to discompose the gravity of judges, in a matter other-  
“ wise so serious.” Perhaps many people may laugh at our ex-  
pectation of finding truth by the testimony of these illiterate wit-  
nesses, who depose to many uninteresting events, at the distance  
of seventeen years, a period which would put the strongest me-  
mory to the full stretch ; yet such must be heard, and by such  
must this great cause be determined in many points.

There are three or four general marks of similitude, which scarce  
deserve to be mentioned, because nothing can be inferred from  
them. Duvernés' company consisted of a gentleman<sup>1</sup> and two la-  
dies, without<sup>m</sup> a servant ; they drank<sup>n</sup> tea ; and came<sup>o</sup> and went<sup>p</sup>  
in a hackney coach. — The drinking tea is by no means peculiar  
to the English ; it is as much if not more used by the Germans,  
and by the Dutch ; and the circumstances of the hackney coach  
and no servant, are nearly connected with the errand on which  
these adventurers came.

## S E C T. II.

### *Of the persons who stole Sanry's child.*

— 271. C. **W**ITH respect to their persons we may observe, that Dr. Cot-  
terel's description of the gentleman applies pretty generally  
to colonel Stewart, “ qu' autant qu'il se rapelle, cette personne  
“ avoit le visage un peu long & assez plein, qu'il étoit grand, &  
“ bien proportionné dans sa taille, l'air male, & paroissant agé de  
“ 55 à 60 ans \*.”

We must apply to the other witnesses for descriptions of the  
women<sup>a</sup>. Duménil says, “ que les deux dames étoient grandes  
<sup>b</sup> — 282. I. “ & maigres †.” His wife observes, that the elder lady was<sup>b</sup>

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\* “ That, so far as he remembers, his face was a little long, and pretty full ; that he  
“ was tall, and well proportioned in his person, had a manly air, and appeared from fifty-  
“ five to sixty years of age.”

† “ That the two ladies were tall and lean.”



“plus corpore<sup>†</sup>” than the other. This by no means agrees with lady Jane and Mrs. Hewit. — Lady Jane *was small, genteel, and delicate*<sup>D.P. 385. B.</sup>; and Mrs. Hewit like a man dressed in women's cloaths.<sup>P.P. 112. C.</sup> It is to be remarked<sup>d</sup>, *that the elder lady passed for the gentleman's*<sup>d</sup> — 286. C. wife, and the other attended her as a dame de compagnie.

The description of the younger lady is attended with an embarrassment, which discredits the testimony of three of the witnesses. Mr. and Mad. Sanry and Mad. Le Gris having in their minds a description of a woman, which resembles lady Jane in two or three particulars, in her “air, pale, delicate, and noble;” they do not know to which of the persons of this company they should apply it. Le Gris, who saw only one lady, who came in the coach to Sanry's, of necessity applies the description to the person she saw: in which case we must look for Mrs Hewit in the lady she did not see. Mr. and Mad. Sanry apply the same description to the person, who staid at the inn, and received the child — This makes both ladies tall and thin; and so far it agrees with Dumefnil's testimony, who had frequent occasion of seeing both women. — 277. C. — 296. B. — 292. H.

It is very clear from the deposition of Le Gris, that the lady who went to Sanry's house, and (as we shall see presently) requested them to part with their child, who was shewn the manner of removing the breast-rupture, with which the child was afflicted, both spoke and understood French. And it is equally clear from the depositions of Mr. and Mad. Sanry, that the lady who received, and spoke to them at the inn, also spoke French: so that both ladies spoke French, which it is well known Mrs. Hewit could not do. The Monitoire supposes, that Sanry and his wife are mistaken; but there is no evidence of this: and even as to the person of the woman they mean to describe, there is a striking difference between her and lady Jane. All the witnesses agree, that the lady they speak of, was “forte grande,” and only from thirty to thirty-five years of age; but lady Jane was little, and was then past fifty. P. 12.

Upon the whole, there is no direct proof, that these persons were foreigners; and it is pretty certain they were not British. — The foreign accent of the strangers, mentioned by these illiterate witnesses, was not discernible to Dr. Cotterel; though at first sight he took the gentleman for an acquaintance, who was an Irishman. Dumefnil, who swears to the gentleman's cinnamon-coloured — 285. L. P. P. 271. B.

† “More corpulent.”

P. P. 279. G. coat and English bob, is contradicted by Vielle, another witness of the pursuers, who dresses him in a tye-wig and French uniform. Duvernés is no English name; he called himself an Irishman, which was sufficient to mislead the witnesses. It is presumed, Duvernés' own word, that he was an Irishman, will not pass for proof at this time with any but the pursuers; and, as it is proved by the testimony of Dumefnil and his wife, that he wrote his name in the livre d'inspecteur with his own hand, and that he certainly meant to design himself from Corke in Ireland, he cannot have been a British or Irish person: it is absolutely impossible, that any person of our country, when he meant to write the name of the city of Corke, should have written it *Korgue*.

## S E C T. III.

*Of the person of young Sanry compared with Sholto.*

TO say the truth, much stress ought not to be laid on the descriptions of the adventurers, who took away the child; the poor people saw but little of them, and may be innocently mistaken. On the next point we may expect greater certainty; when the child was lost, doubtless all the powers of memory in the family were at work, to recollect his size, his features, his manners, and his dress; and the father, who sought him with sorrow for many months, was certainly able to have known him from all other children in the world. We may justly therefore require, that these people should describe their own child: they have done it; and from hence we may be assured, that he was not the same child as Sholto.

D. P. 148. D. The children are both fair, delicate, and have blue eyes; but Sanry's child was near four months older than Sholto; and yet Sholto was less than Archibald, who was born, as the pursuers agree, above three months after Sanry's child. Sholto was indeed reputed to be very little of his age, by all those who believed he was born on the 10th of July. The first speaker (a) in Anderson's book, is made to declare, at page 42, that the age of this child exactly agreed with the supposed age of Sholto: an assertion which is also shamefully imputed to another speaker (b), at page 249.

P. P. 293. B.  
— 295. I. Sanry and his wife swear, that their child “*marchoit foiblement, & qu'il balbutoit quelque mots, tels que Papa, Mama, & autres de*

(a) Lord President.

(b) Lord Stonefield.

“ *cette*



“ *cette espece* \*.” Mr. Murray, at whose house the family lodged on their arrival at London, swears, that Sholto could neither walk nor speak, when he was brought to him; and that the first word the child spoke, he learned from him. — Abbé O’Neil, who saw him at Rheims, says also, that he could neither speak nor walk. D. P. 410. B. P. P. 262. K.

Mad. Sanry and Le Gris both told Mr. Andrew Stuart, in June 1763, “ qu’il étoit sujet de laisser tomber l’os de la poitrine quelquefois, & que l’une & l’autre avoit montré à la dame comment le lever.” — Both these women have declared, in January 1764, that when the gentleman asked, “ si l’enfant n’avoit point d’incommodité? elle (Mad. Sanry) a répondu, que non.” D. P. 1030. F. — 1031. A. P. P. 293. C. — 275. I.

Mad. Gravain and Mad. Laupin, two widows, who lived in Sanry’s house, swear that the child had a mark of the small-pox near one of his eyes. — Mad. Gravain says, it was “ *bien visible*.” Mad. Laupin calls it “ *un petit brin*.” — Mad. Sanry herself had given Mr. Andrew Stuart the same account in June 1763; yet when the depositions are taken in 1764, both she and her husband deny the mark. — 281. A. — 282. B. D. P. 1030. F. P. P. 293. A. — 296. E.

For what purpose was all this prevarication by Mr. and Mad. Sanry and Mad. Le Gris, unless to conceal those distinctive marks, by which it would be infallibly known, that Sholto was not Sanry’s child? Sholto had neither disease nor mark. — 262. K. D. P. 366. F. G.

The papers are all in proof: it is a strange mistake therefore to say, what is imputed to a gentleman (a) by Almon, p. 317, that the witnesses here are under no suspicion whatever: a mistake, which has unluckily kept its place in the more laboured edition of the Scotch writer, p. 449.

#### S E C T. IV.

*Of the time of the enlevement of Sanry’s child.*

THE next point to be examined, is the time. It is observable on the general view of this story, that the enlevement happened in winter 1749—50. The day of the week too is settled by Dumefnil’s evidence, which is uncontroverted. Sanry saw his child for the last time on Saturday morning; it was taken from

(a) Lord Hailes.

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\* “Walked feebly, and that he lisped some words, such as, Papa, Mamma, and other such words.”



his house on Friday ; Wednesday and Thursday were spent in treating for it ; and, as there was no jour de fête in the middle weeks of November 1749, we must go back as far as Sunday for the day of Duvernés' visit to Dr. Cotterel ; so that, if this event happened in November, Duvernés' residence at the Croix de fer after applying to the curate was just a week. The time is thus settled by the pursuers.

There is another mistake in Almon's book, page 219, where it is said, (*a*) that sir John stole the child of Sanry, which happened on the 4th day after they arrived at Paris ; for it is in proof, that it must have happened on the 5th ; after the person, who stole him, applied to the curé de St. Laurent.

There are still more mistakes in this strange book at page 200. It is there said (*b*) " That the calculation of Sanry's enlevement is " wonderfully exact : it is brought to have happened either upon " Sunday the 16th, or Sunday the 29th of November 1749.— " They ask for a child of fifteen months old ; they refuse several " of a lesser age ; and at last pitch upon a boy of eighteen months " old." All this is wonderfully inexact : no one ever supposed the enlevement to have happened on Sunday the 16th :—and on November 29, (which by the bye was no Sunday) sir John Stewart was on his way to England. There is not a syllable in proof, that Duvernés asked for a child of fifteen months old, or refused those of a lesser age ; and at last the boy pitched upon is not of eighteen months, but of twenty or twenty-two. It is indeed in proof, that Duvernés made no choice ; but offered to take any of Sanry's children they pleased ; and they gave him the youngest, as most burthensome to them.

To proceed ; the pursuers undertake to prove, that Sanry's child was taken from the Croix de fer in the night between Saturday the 22d, and Sunday the 23d, of November 1749, and that sir John, &c. left Paris that very day.—

The defender has made three several replies to this new arrangement of the pursuers.

I. That sir John Stewart was not at Paris on November 22 1749.

II. That Sanry's child was not taken away in November 1749, but in January 1750.

III. That Sholto, the child of lady Jane, was at nurse in another place from his birth to the time he went to Rheims.

(*a*) Lord Ellick.

(*b*) Lord Alemoor.

I. Sir John Stewart was not at Paris on Nov. the 22d 1749.

P.P. 260. B.

The witnesses whom the pursuers have brought to prove this point are the abbé O'Neil, who had the care of sir Walter Rutledge's affairs, and lent him the chaise, and three acquaintance of Levermé the postilion, who is dead.

We might have expected, indeed, that this point should have been determined by the honourable friends of lady Jane at Rheims; but, unluckily for the pursuers, no person of rank appears to help them: but let us hear the witnesses.

The abbé O'Neil says, “ qu'il sçait par lui même que Mr. Stewart, — 260. A.  
 “ &c. depuis leur depart de Rheims jusqu'à leur retour au dit  
 “ Rheims, ont été absent environ 17 & 18 jours, un jour plus ou moins,  
 “ autant qu'il peut s'en souvenir: que ce fut aux environs de la — 260. E.  
 “ St. Martin, 11 Nov. 1749, que Mr. Stewart & lady Jeanne Doug-  
 “ las partirent de Rheims pour Paris: que le voiturier lui raconta — 261. A.  
 “ qu'il n'avoit conduit Mr. Stewart, &c. que jusqu'à la Villette: que  
 “ ce voiturier y étant resté, sans sçavoir où étoient allés mon dit Sieur  
 “ Stewart & sa femme, commençoit à en avoir de l'inquietude; mais  
 “ que se promenant le 6 ou 7 jours après son arrivée, il rencontra  
 “ Monf. Stewart: qu'il avoit resté à la Villette 9 jours en tout: qu'il — 261. F.  
 “ a vû à Rheims Monf. & Mad. Stewart bientôt après leur retour; &  
 “ que, ce fut le 2 de Dec. qu'ils les a vit pour la premiere fois: qu'ils,  
 “ après leur retour à Rheims jusqu'à leur depart pour l'Angleterre,  
 “ ne resterent que très peu du jours, 5 ou 6 jours tout au plus, au-  
 “ tant qu'il peut s'en souvenir: qu'il a vû 3 fois Monf. & Mad. — 261. I, & C.  
 “ Stewart dans cette intervalle, y compris le jour de St. François  
 “ Xavier, Dec. 2.”

The other three witnesses never saw sir John Stewart or lady Jane; they are introduced to tell a hear-say story in the name of the postilion.

Vuyet says, Levermé told him he was eight days without seeing — 265. B.  
 the gentleman; that he met him in the street Coqueron, a great  
 way from the Croix de Fer; that the chaise came back about the — 266. L.  
 end of November.

Levermé, the postilion's nephew, makes the stay at Villette only — 267. D.  
 five, six, seven, or eight days.

Simonet, the last witness, says the driver told him he waited eight — 268. E.  
 days at Villette, before he saw the gentleman; that he begun to be  
 uneasy for want of money, and said in jest, that he was tempted to — 268. F.  
 sell the chaise to pay his expences.

Such is the pursuers evidence. Sir John Stewart has said, that he intended to stay at Paris only one night, but on account of lady Jane's



indisposition he staid four. One thing therefore we learn from these depositions; that sir John spoke truth when he said, he outstaid his time. But can any one in good earnest believe the exaggerated reports of the second-hand witnesses, in preference to the precise accounts of sir John and Mrs. Hewit? especially when the witnesses themselves are not agreed in their reckoning, and one of them says, that the driver was in jest.

To be serious: When it appeared that sir John Stewart left Rheims on the 29th of November, all the accounts of the abbé O'Neil and his fellows became plainly and palpably incredible. If the abbé is to be believed in any thing, it is, that sir John and lady Jane were five or six days at Rheims after their return. It is certain, he could not well make his three visits in less time. If this be true, sir John was at Rheims on the 22d of November, and had left Paris the 18th. It is needless to examine these depositions any farther; they plainly shew that sir John Stewart was not at Paris on November the 22d.

Let us then turn to the pursuers memorial.

The learned memorialist has never dared to assert, that sir John Stewart was less time at Rheims after his return than three whole days: it is allowed therefore, that he was at Rheims on November the 25th.

It is also allowed, and even pleaded by the memorialist, that the family must have been four days on the road in returning from Paris: sir John Stewart and Mrs. Hewit have said they were: the computation of the abbé O'Neil admits it; and the memorialist himself has given his opinion of the road in the following words. He is speaking of the family's return from Paris in Aug. 1748, when sir John brought a chaise from Paris to Dammartin, in which sir John, lady Jane, Mrs. Hewit, and the child continued their journey to Rheims.

P. Mem. pt. 3.  
page 180.

He says, " They must have left Dammartin on the 14th *at latest*;  
" for the journey would require three days, as they travelled in a  
" chaise with the same horses which sir John had brought from Paris  
" to Dammartin on the 12th."

Thus we see that not only the pursuers evidence, but the pursuers logic too, is all on the side of the defender, and shews clearly that sir John was not at Paris at midnight, between Saturday the 22d and Sunday the 23d of November 1749, when the pursuers suppose that Sanry's child was taken from the Croix de Fer. If the reader desires to know the precise time at which sir John Stewart returned to Rheims, he may find the information he wants in its proper place in the defender's proof.



II. Having proved that fir John Stewart was not in Paris on the 22d of November, the day on which the pursuers have now been pleased to fix the enlevement of Sanry's child, one would think, that the defender's business was now done, and that he need not trouble himself any further with this story: but as it is not the design of these papers to defend either party, but to investigate all the facts, which are brought to proof in this cause, we shall now proceed to consider the second point,—When Sanry's child was really taken from him—especially as some persons may perhaps be confounded by the frequent mention of the month of November in the books above quoted.

We must first see, by what method the pursuers have been led to fix the enlevement on November 22, 1749, and then shew its real date.

When Mr. Andrew Stuart and Mr. D'Anjou first applied to the curate of St. Laurence, he had totally forgot both the year, and the time of the year; the year was first settled by the parish register; and the family talked of the age of the child as eighteen or nineteen months: but when the entry in the records of the police was known, then it was thought past a doubt, that the child was taken away in November 1749.—

P. P. 1071. K.

—1074. B.

Much about the same time an entry of “Col. Stewart & sa femme” at one Rheneau's on November the 19th 1749 was discovered, and Duvernés' name stood entered at Selle's on November 21. On these grounds the enlevement was stated to have happened in the week following, in the *Monitoire*, the *Condescendance of Facts*, and in Dr. Cotterell's first evidence taken in January 1764.

Mon. P. 9.

Cond. N. 45.  
&c.

P. P. 207. A.

But as soon as it appeared, that the Col. Stewart mentioned at Rheneau's was Col. Stewart of Ardschiell, the pursuers lost one half of their conjecture; and when it was known that fir John Stewart set out from Rheims for England on November 29th, a fact, which happened at Paris in the week following, Sunday November 23, could no longer apply to him. The pursuers therefore changed their ground.

They observe on this occasion, that the date of the *regître general de police* is not the date of the entry in the *Livre d'Inspecteur*; but the date of the inspector's visit, when he first saw the name. And as there is no inspector's visit to Selle's upon record between November 14th and November 21, they think they are at liberty to place Duvernés' entry by conjecture at any time between the

two visits; and accordingly they fix it to the first possible day of the seven, viz. November 15, which is the only day will serve their purpose.

D. P. 174. G. This, it must be owned, is a very hardy conjecture. If indeed it were proved, that the inspector did not visit Selle's house between November 14 and November 21, they might have some shadow of reason for what they alledge; but this is not the case. The general list of names entered at the inns (which in this case is missing) is always reduced by the police into three classes, the foreigners, the military, and thirdly, the other natives of France. This last register of the native French, plainly the most in use of the three, is also lost; so that there is no proof, that the inspector neglected his duty for a whole week. On the contrary, from other books of inns in the near neighbourhood of the Croix de fer, which still exist and are in process, it appears he visited them on the 18th of November; and if he visited the inn of the Croix de fer at the same time, agreeable to his usual practice, Duvernés' name would have been of that date in the Livre de police, had he been really in the house when the inspector visited it: and if Duvernés did not arrive till after the 18th, he could not apply to the curate till Sunday the 23d of November, consequently did not leave the Croix de fer till the 29th.

This violent conjecture, thus ill supported, and contrary both to proof and to probability, is all that the pursuers alledge for shifting the time of this enlevement to the week preceding Sunday November 23.—Here we must leave it with those, with whom such reasoning will pass for proof, and proceed to fix the real time.

P. P. 270. B. The parole evidence will not serve: it is indeterminate and suspected.—Dr. Cotterel and the other witnesses were told the time of sir John Stewart's journey, before they mentioned the time of the enlevement.—The Dr. owns, that he has no other estimate of the month, but by conjecture founded on the record of police.—This book proves no more, than that Duvernés was at the Croix de fer about November 21, 1749, when Dumesnil saw him write his name. He might be there at that time, and continue several weeks, notwithstanding Dumesnil and his wife have said, that he staid five days at most; which is not true according to the pursuers system: or, he might have gone away, and returned a second time five weeks later, though, as in many other instances, his name was not repeated in the Livre d'Inspecteur.

The fact now to be explained was discovered, when the proof was almost finished.—The curate of St. Laurence had mentioned, that



that letters were written by him to the lieutenant-general de police on the subject of this enlevement; and that enquiries were made at the time for the persons, who had carried off the child. Search was therefore made at the office of police for the curate's letter, or for the reports which had been made to the magistrate in consequence of it. The letter was never found; but a note of it appeared in two different registers of the police, the one kept in the lieutenant-general's closet, the other in that of his first secretary.

The registre des renvoys, kept in the lieutenant de police's closet, is of unexceptionable authority. Mr. D'hamecourt deposes, that it will shew the receipt of a letter to the exactness of half a day. In the present case we are sure it is right, because the second book is not a copy of the first, but another extract from Dr. Cotterel's original letter, and it bears the same date of January the 10th, 1750. It is easy to connect this date with the time of the enlevement by Dr. Cotterel's testimony, who is certainly the person of the most credit brought to witness this transaction.

He deposes, that he did not hear of the “ \* enlevement que  
 “ quelques jours après, & qu'alors il envoya chercher la femme  
 “ Sanry:” and again, “ † qu'il est persuadé, qu'il n'a pas beau-  
 “ coup tardé à écrire à Monsieur le lieutenant-general de police  
 “ depuis que l'enlevement fut parvenu à sa connoissance, at-  
 “ tendu que la nature de l'affair demandoit celerité; mais qu'il  
 “ ne peut determiner au juste, combien des jours se sont ecoules;  
 “ croit, sans pouvoir néanmoins l'assurer, qu'il n'a pas dû s'ecou-  
 “ ler plus de 3, 4 ou 5 jours, ou peut-être moins.”

P.P.270.G.H.

D.P.268.B.

The doctor speaks with the diffidence of an honest man, and gives a sensible reason for what he asserts: if he had not written very soon, notice would have reached the lieutenant de police through the ordinary inspector of police at Selle's: but the doctor's account is the only one on record; which shews that he was the first reporter.

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\* “ Enlevement till some days after, and that then he sent for Sanry's wife.

† “ That he is persuaded, that he did not delay writing to the lieutenant-general of the police, after the carrying off the child came to his knowledge, considering that the nature of the affair required dispatch; but that he cannot determine precisely how many days may have passed; though he believes, without being certain however, that there could not have passed more than three, or four, or five days, or perhaps fewer.”

P. P. 291. H. Mad. Sanry in her deposition, after mentioning the enlevement, has slipped in a line about her husband's journey to the sea-ports; and then she proceeds, "*Que 2 ou 3 jours après*" the curate sent for her. Two or three days after what? Not surely after Sanry's return at the end of six months: then it was, two or three days after the enlevement.

— 271. A. The curate adds farther, that he not only wrote, but waited upon Mr. Berrier, to know whether he had made any discovery; and that Mr. Berrier told him, he had made none.

If this evidence wanted confirmation, it may be had from the papers produced by order of the house of Lords. It there appears, D. P. 1030. E. that Mad. Sanry told the pursuer's agents, "*\* Que peu de jours après l'enlevement le curé l'envoya chercher, & lui dit, qu'il feroit faire des recherches, & qu'elle pouvoit retourner chez lui dans 8 ou 10 jours; qu'elle retourna chez le curé au bout de 10 ou 12 jours, & apprit du lui, qu'il n'avoit pas pu rien trouver.*" That the curé was applied to even before Sanry set out for Rouen, appears from a passage in Mr. Andrew Stuart's journal, in these words: "The curate told him, that the letter he wrote

P. P. 1072. C. "to Mr. Berrier was the same day or the day after, that the father had acquainted him of the flight of these strangers with the child; and that he both wrote and spoke to Mr. Berrier about this affair; and that searches were made by the police in vain."

Let us lay all this together, and it will be past a doubt, that the curate had received his answer from the lieutenant de police, which he communicated to Mad. Sanry within a fortnight after the enlevement; that he wrote to Mr. Berrier January the 9th 1750; and that the enlevement happened in the week preceding Sunday the 4th of January 1750.

Several parts of the parole evidence agree best with this reckoning. The father's account of his child's age, between twenty and twenty-two months old; and the sister's account that he was about twenty-one months old, agree only with this reckoning.

— 283. H. Mad. Dumefnil says, the enlevement happened five or six months after her marriage (which she dates on June the 10th 1749); but on searching the register it appears, that she was mar-

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\* "That a few days after the child was carried off, the curate sent for her, and said to her, that he would order enquiries to be made, and that she might return to him in eight or ten days; that she returned to the curate's at the end of ten or twelve days, and learned from him that he had made no discovery."



ried on July the 10th 1749, and the sixth month of her marriage PP<sub>531</sub>.N<sup>o</sup>18.  
was between December 10th 1749, and January 10th 1750.

Mad. Lanoue, the child's sister, who plays about the 21st of November like the other witnesses, has thrown in a word about the weather, “\* Pendant qu'il faisoit froid.” The writer of these papers has no means of knowing what the weather was at Paris; but in the place where he lives, he is assured, that the week before November 23d was no frost, and the week before January 4th 1750, was. The numbers are, according to Reaumur's tables, from Wednesday November 19th to November 23d 1749, ... 11, 11, 13, 6, 6, and from Wednesday December 31st 1749 to January 4th 1750, ... 0, 1, 0, 2, 3, below. D.P. 273. B.

It should be observed too, that neither of the gentlemen, who have independently made extracts of Dr. Cotterel's letter, have mentioned any date of the enlèvement: which is of itself a proof that it happened recently; and that they both considered the date of the receipt of Dr. Cotterel's letter on January the 10th 1750, as sufficient to ascertain the date of the enlèvement.

Against this positive evidence the pursuers employ another criticism. They observe from the record, that Dr. Cotterel had informed the lieutenant de police, that Duvernés had given a false address; which could not be known, till the father had made search for him; that the father went to St. Germain's on his way to Rouën, &c. from whence he wrote to his wife, that he could not find his child; and they confirm this by Dr. Cotterel's testimony, who is not sure but he may have mentioned Rouën in his letter to Mr. Berrier. But in this account they slip over several circumstances; the father's first journey to St. Germain's was on the Monday following the enlèvement, from whence he returned at night, without having found Duvernés, or his child. This was a sufficient, and indeed the only ground for saying, that the gentleman had given a *false address*; and the name of Rouën might very well have been in Dr. Cotterel's letter, even supposing it written within two days after the enlèvement; for on the very night on which the father returned from St. Germain's, Dumesnil (who was a Havre man) advised his journey to the sea-ports. On this pretence the father set himself to borrow money, and it is highly probable applied to the charity of Dr. Cotterel, who might very well mention this his intended journey in his letter to the police. — 271. F. — 269. F. P. P. 286. I. — 295. A. — 286. K. D. P. 272. E.

\* “When it was cold.”

3d. The last position of the defender is, that Sholto was at nurse in another place from the time of his birth: but as the proof of this is unnecessary here, and nearly connected with the dispute about Pierre la Marre, it is best to defer it, that both may be considered together.

## S E C T. V.

*General remarks on the case of Sanry.*

UPON the whole it appears, that the parole evidence is too precarious and contradictory to enable us to determine with certainty either the persons, who took away the child, or the date of the enlevement. But, if Duvernés wrote his name in the book, as deposed by Dumefnil and his wife, he could be no British person:—if both ladies spoke French, and were *tall* and *thin*, and the *oldest* the wife of Duvernés; and if one of these ladies was only from thirty to thirty-five years of age, as deposed by the whole corps of witnesses, they could as little be lady Jane and Mrs. Hewit. The description of the child wears a face of still more authority; and from that it is clear, that Sholto could not be the son of Sanry, because Sanry's child was marked with the small-pox, and he was not; because Sanry's child had a breast-rupture, and he had none; and because Sanry's child could speak and walk before he was taken from his father's, and Sholto could neither walk or speak till he had been some time in England. The defender is still happier in being able to show from letters and records superior to all suspicion, that sir John Stewart had left Paris before the 22d of November 1749, when the pursuers pretend this enlevement happened; and that Sanry's child was not carried off till a few days before the 10th of January 1750.

A remark or two on this transaction naturally offer themselves.

1st. In looking over the history of the discovery of this enlevement, we do not find, that there was one moment of time, in which it could appear to an unprejudiced mind applicable to sir John Stewart. Mad. Sanry and Le Gris told the pursuers agent very early, that the child was marked with the small-pox, had a breast-rupture, and that both ladies spoke French.—The story first told in the *Condescendance of Facts* is absolutely incompatible with what all and every of the Rheims witnesses have deposed in this cause: how the same came into the *Monitoire*, it becomes not a foreigner to determine.

How



How far the conduct of the pursuers in the Criminal Process can be justified, may be a subject of debate. Certainly every Englishman has just reason to honour the constitution of his country, under which he cannot be prosecuted criminally on a charge, which has not at least one witness to support it. As for the amendments since made in the date of this story, they are purely the result of necessity, unsupported by the least shadow of evidence, and equally ineffectual as the first account.

2d. We cannot help being struck with the extraordinary use, which the pursuers made of this incident. The arguments of the French lawyers in defence of the Tournelle process all turn upon the notion, that the crime of the supposition of these children was committed in France. But so long as the evidence went no farther than to prove, that the children had usurped a civil estate in Scotland, to which they had no legal right; or, in other words, that lady Jane was not brought to bed; what was this to the law of France? Was any mortal in France injured by it? As soon as the pursuers could alledge, that sir John Stewart had stolen a child from its parents at Paris; then the state of the case was changed; then, and not before, the Tournelle process had the letter of the law in its defence.

The utility of this transaction to the pursuers was not less on the side of popular credit. The proof, that these boys were the children of other women, is in its nature the most satisfactory of all proofs to popular judgments. Mr. Andrew Stuart writes thus to baron Muire: “ I imagine this incident will soon open the eyes P.P. 594. 2.  
“ of all the adherents of the other party: it has come like a thun-  
“ derbolt upon those concerned for them here.”—The prodigious effect, which the story had upon the minds of all who heard it, is in every one’s memory, and appears in many points of the proof. Mad. Dumefnil deposes, that she learned from the Moni- — 284. G.  
toire, that the child about which she deposes is dead. And there is a remarkable circumstance in the conduct of Mr. Langier de Beaurecueil, curate of St. Marguerite, whom Mr. Andrew Stuart — 596. L.  
represents as a man of good sense, and a very decent, becoming behaviour, when Mad. Mignon, the mother of the other child which was lost, came to him in revelation; he told her “ \* en  
“ badinant, ces personnes, qui vous ont enlevé l’enfant, n’ont — 597. G.

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\* “ He told her in joke, that the persons who carried away her child, did not mean to do him any harm, as you see they have made him a peer of Scotland, with an estate of three or four hundred thousand livres a year.”

“ pas voulu lui faire du mal, comme vous voyez, puis qu'ils  
 “ l'ont fait pair d'Ecosse, avec trois ou quatre cent milles livres  
 “ de rente.” This encouragement might easily have turned a  
 wiser head and honefter heart than Mad. Mignon's.

3. The presumptive arguments, which arise from this transaction, are clearly in favour of the defender.—It has been seen, in what an almost miraculous manner he has been able to ascertain the precise time of sir John Stewart and lady Jane's departure from Rheims to England, to the disgrace of sundry of the pursuers witnesses, who, in order to prove that he was really at Paris at the time this enlevement was then thought to have happened, swore most pointedly to his residence at Rheims long after he is now admitted to have been on the road to England: and in what a no less remarkable manner he has been able to fix, beyond a doubt, that this enlevement did not happen, till sir John and his children were in England.—There are one or two more facts, on which a farther presumption may be founded, which remain to be mentioned.

All the letters written by the family, during the time that Sholto was said to be at nurse, represent him as a puny, weak, and delicate<sup>a</sup> child: he appeared the same to the persons<sup>b</sup> who first saw him at Rheims, and in England.

<sup>a</sup> Serv. 39. G.  
 — 37. E.  
 D. P. 889. D.

P. P. 1065. E.

<sup>b</sup> D. P. 151. F.

— 148. C.

— 410. B.

P. P. 262. I.

<sup>c</sup> D. P. 148. D.

— 410. C.

Sholto is universally allowed to be the very picture<sup>c</sup> of lady Jane Douglas.

Thus ends the case of the first enlevement. It is needless to enumerate here the mistakes, which are not relative to the cause; though the fact of the enlevement is acknowledged, and passed in the compass of a week, they would more than fill a page. It may perhaps be useful to produce some of them in the sequel, as instances of involuntary error; they will serve to vindicate the characters of some witnesses, who are accused of wilful perjury for mistakes in such circumstances, as human nature cannot reach.



## S E C T. VI.

*A general state of Mignon's case.*

IT is difficult to collect such a state of this enlevement as shall be free of all suspicion. The following few circumstances are put together, not because they are all of entire credit, but because they are such as the defender will not, and the pursuers dare not, deny.

A gentleman applied several times to Mad. Guynette (a woman who sold biscuits at the gate of Notre Dame, and who has been dead some years), and asked her, if she could procure him a child, which had blue eyes: upon which she spoke to a Mad. Charlan (lately deceased), who carried her child to the gentleman<sup>a</sup>; but she refused to give her child: after which, Mad. Guynette, at the gentleman's desire, made the same proposal to Mad. Mignon, who brought her child to the gate of Notre Dame the same afternoon.

The child was called Jaques Louis, and born on the 28th of June 1748. The gentleman having examined the child, and seeing that he had blue eyes, a white complexion, and fair eyebrows, found him to his taste; and bade the mother return with him the next day. Accordingly on the next day, which Mr. Mignon is sure was a Thursday, Mad. Mignon and her husband went with the child, and found the gentleman and a young woman with him; the child was new drest at a book-feller's (one Mad. Edouard's) opposite to the church; the mother received three louis-d'ors, and the gentleman, the *demoiselle*, and the child, went off in a hackney coach; neither Mignon nor his wife having once thought proper to ask the gentleman his name or abode.

The application of this story to sir John Stewart, lady Jane, and Mrs. Hewit, depends, as that of Sanry did,

- 1st. On the similitude of circumstances and persons.
- 2d. On the resemblance of Mr. Douglas to young Mignon.
- 3d. On the coincidence of time to the birth of Mr. Douglas.

There are but three living witnesses to the enlevement; the father and mother of the child, and Mad. Edouard, who remembers nothing of consequence. We must first observe, how

how sir John Stewart is affected by this story, supposing these witnesses to be people of credit: we shall afterwards see what reason there may be to mistrust them.

## S E C T. VII.

*Of the persons, who bought Mignon's child.*

**W**ITH respect to the similitude of circumstances and persons, here seems to be a total want of application either to sir John Stewart, or lady Jane, or Mrs. Hewit.

P.P. 227.B.  
— 233.K. The Mignons say, that the gentleman wanted to borrow two children to console a lady, who was lately brought to bed of twins, which were dead; and that, if he could procure but one, he said he would tell the lady, that the other was weak and sickly. These circumstances may be accidental; though perhaps we may find another way of accounting for them. The pursuers surely will not rest upon them; they do not suppose that lady Jane was really delivered of two dead children; and they cannot believe, that sir John was so totally void of common sense, as to trick these people of their child, and at the same time trust them with such circumstances of the case as would have infallibly led to a discovery. He did not run away from them; he went and  
Mem. P. 168. lodged (soon after the date of this transaction) at an hotel-garnie, and, as the pursuers now confess, gave in his name in his own handwriting to the people of the house. Both in letters from hence and afterwards from Rheims he described the youngest child as weak, and sickly; and said, that they concealed his condition from lady Jane. Had the Mignons applied to the police, (and what but their own guilt prevented them) or had their honefter neighbours brought the affair before the police, they would soon have learnt the news of a foreign gentleman, who gave out that his wife was delivered of male twins; they would have heard the story of the weak child gone into the country; and been told, that one of the children was fair, with blue eyes and light hair, such as they lost. It is impossible to suppose that sir John and lady Jane were so void of sense, as this conduct would represent them.

Mem. pt. 3d.  
P. 257. With regard to the persons of these adventurers the pursuers confess, that the woman described by the Mignons does not in every respect resemble either lady Jane or Mrs. Hewit: they might have said, that neither the man or woman have any resemblance to Sir John Stewart or his company. The woman is  
“ assez



“ assez replette, d'une bonne corporance <sup>a</sup>, assez grosse, agé de <sup>a</sup> P.P. 229 K.  
 “ 30 à 35 ans tout au plus \*,” almost as tall <sup>b</sup> as the gentleman, <sup>b</sup> — 235. K  
 and speaks French <sup>c</sup>, and looks like a chamber-maid <sup>d</sup>. Not one <sup>c</sup> — 234. E.  
 word of all this is pretended to have the smallest resemblance to the <sup>d</sup> — 201. B.  
 description given by the Michel family of lady Jane or Mrs. Hewit. — 203. H.

The gentleman is about five feet and one inch French measure in height <sup>e</sup>: these persons are said to be foreigners by ignorant <sup>e</sup> — 234. I.  
 people, who are no competent judges; and it is certain they were not English. The report indeed soon ran, that they were so; — 236. H.  
 but Mignon owns, that he was the author of it; for his wife says, — 230. K.  
 he told her so, and that otherwise she should not have suspected it. — 236. F.  
 Mignon being asked, how he knows an Englishman, when he <sup>g</sup>.  
 sees him; answers, “ Qu'il ne distingueroit pas les Anglois de  
 “ tous autres etrangers, ne connoissant pas la difference des lan-  
 “ gues; qu'il ne pouroit non plus les distinguer par leur visage,  
 “ leur mines, ou leur corporance; qu'il les distingueroit mieux  
 “ par leur habits; que la seule maniere dont il put les dis-  
 “ tinguer par leur habillemens, c'est, qu'ils ont un petit cha-  
 “ peau, des manches en bottes, & des habits de couleur bleau-  
 “ atre †.” He had just before described the person who took  
 away his child as “ portant peruque avec une bourse, autant — 235. I.  
 “ qu'il peut s'en souvenir, un habit tout uni de couleur canelle,  
 “ un chapeau tout uni fin à grands bords,” directly the reverse to  
 his description of an Englishman.

## S E C T. VIII.

*Of the person of young Mignon compared with Mr. Douglas.*

THE comparison of the persons of the children is attended with still less difficulty. There are two arguments, which seem convincing. 1st. Mignon's child was born June 28th. All the Mignon witnesses agree, that he was a strong, healthy, and large child of his age, when he was taken away.

Mad. Mignon says he was “ forte & robuste <sup>a</sup>.” Mad. Du- <sup>a</sup> — 229. G.  
 mesnil, that he was “ † beau, bien fort, le visage <sup>b</sup> rond, & potelé.” <sup>b</sup> — 205. B.

\* “ Pretty full, rather corpulent, pretty fat, and from thirty to thirty-five years at most.”

† “ That he could not distinguish the English from other foreigners, as he does not know the difference of languages; that he could as little distinguish them by their faces, their manners, or their size; that he could distinguish them better by their dress; and that the only manner in which he could distinguish them by their dress, is, that they have little hats, round cuffs, and blueish-coloured cloaths. — He had just before described the person, who took away the child, as wearing a bag-wig, so far as he could remember, a plain cinnamon-coloured coat, and a broad-brimmed plain hat.”

‡ “ Big and strong; big and very strong with a round and plump face; a big and fine child.”



c P.P. 200. A. Mad. Odeneau calls him “un gros et bel enfant.”—Lady Jane’s child was delivered to nurse Favre on the 22d of July, when Mignon’s large, round, and strong child was above double the reputed age of Mr. Douglas. Mad. Favre’s description of the child must be quoted at length, as it has undergone the critique

P.P. 139. L. of the pursuers. She says, “\* que lorsque l’enfant lui a été donné, “il pouvoit avoir trois semaines ou un mois ; qu’il étoit alors en si “mauvais état, qu’on ne lui auroit pas donné 8 jours ; mais qu’il “n’avoit plus la couleur rouge, que les enfans nouveaux nés ont. “ordinairement 8 ou 10 jours ; qu’il n’avoit plus le ventre en- “touré de bandes, état dans lequel on les tient jusqu’à ce que “le cordon du nombril soit tombé, & que l’enfant avoit passé ce “tems.” The pursuers tell us, that she imagined him three weeks or a month old : a strange inference from this quotation !

Mem. pt. 3. p. 173. lin. 19. She says expressly, that she had no reason to think him above eight days old, except that the red colour of a new-born child was gone off, and the navel-string fallen, and the roller taken away : what she adds, that he might be three weeks or a month old, is no proof that she really thought him so ; on the contrary, it is a proof of the miserable effects of the Monitoire, and popular clamour, which, though it did not influence this honest woman to say an untruth, engaged her to prepare a retreat against that weight of contrary evidence, with which she was threatened ; which perhaps overbore in her mind the testimony of her own senses, and made her believe that she had nursed Mignon’s child. Her positive testimony is clear, that the child was no more than ten or twelve days old. He might possibly, according to her, be three weeks or a month old, but by no means three months ; an age at which Mad. Mignon says her child might have passed with those, who did not know his real age.

Again ; the circumstance in the Mignon’s story the most frequently and positively repeated, is, that the child which the gentleman wanted <sup>d</sup>, the child Charlan <sup>e</sup>, which his mother would not part with, and the child Mignon, which he got, were fair, with blue eyes and white hair.—The pursuers do not deny this ; nor do they deny, that the child Archibald <sup>f</sup> was as different from these children, as one child can well be from another. They had made great use of the dark eyes, hair, and complexion of Mr.

\* “That when the child was given to her, he might have been three weeks or a month old ; that he was then in so bad a condition, that one would not have taken him for eight days old ; but that he had not the red colour which new-born children ordinarily have for eight or ten days, and that his belly was not tied about with bands ; in which state children are kept till the navel-string is fallen ; and that the child had passed this time.”



Douglas at Rheims, as a presumptive argument, that he was not the brother of Sholto, whose eyes were blue and his hair fair : it is an acknowledged fact, therefore, that Archibald appeared at Rheims a brown child, with dark brown eyes, and black hair.

The pursuers combat this difficulty with a remark or two.

1st. They bring several persons to observe <sup>g</sup>, and the witnesses of the Mignon and Charlan families are eager enough to say of themselves <sup>h</sup>, that eyes and hair may change ; so they may, that is, to a shade or more of the same colour in a course of time ; but none of these witnesses, nor any one else, ever heard of an entire change of eyes, hair, and complexion, worked in the compass of a month.

<sup>g</sup> P.P. 216. L.  
 — 475. D.  
 — 476. G.  
 — 481. B.  
<sup>h</sup> — 191. K.  
 — 200. B.  
 — 203. F.

2d. They tell us, that the complexion and colour of the eye is not fixt and determinate in children so very young as this was. Then all that their own numerous witnesses to this enlevement have sworn about eyes and complexion is false ; or this child was not so young as they pretend, when he was taken away : neither of which will they choose to own. What is a mere criticism in the pursuers memorial, is become an hardy assertion in the correct publication of the writer of Edinburgh ; and we are told at page 161 (a), in direct contempt of near thirty witnesses, “ that a child “ every way corresponding to the child of lady Jane actually “ was picked up.”

— 216. G.  
 — 475. E.  
 — 481. A.

There is a circumstance in the dress of the child, which is considered by the pursuers as an argument of suspicion. When Archibald was delivered to nurse Favre, she deposes, that his dress was as follows. “ \* Que l’enfant avoit du fort beau linge, “ et des dentelles magnifiques sur ses brassières et sur ses cornettes, “ et qu’au lieu des langes de futaine par dessous, et de moleton par “ dessus ; et qui sont l’usage pour les enfans des gens, comme il “ faut, il avoit des langes de linge piqué par dessous, et un lange “ de couverture de laine par dessus.” Here is something, which did not please the French nurse. The pursuers endeavour to point out in this description a part of the dress of Mignon’s

P. P. 140. L.

(a) Lord Alemoor.

\* “ That the child had fine linen and magnificent laces upon his waistcoats and upon his caps ; and that, in place of swaddling-cloaths of fustian below and of swan-skin above, which it is usual for the children of people of fashion to have, he had swaddling-cloaths of quilted linen below, and a swaddling-cloth of common flannel above.”

P. P. 226. L. child, which was left upon him, when he was taken from his parents. Mad. Mignon's words are, "Elle remarqua, qu'au lieu  
 " d'une lange piqué, ils n'avoient apporté qu'un linge double, com-  
 " me un tête d'oreiller ; surquoi elle dit que ce n'étoit pas capable  
 " de soutenir les reins de son enfant ; surquoi la depofant mit  
 " celui qu'elle avoit apportée, & lui mit une bande des sienne,  
 " parce qu'elle étoit plus fort que les leurs, pour soutenir les  
 " reins de l'enfant\*."

Mem. pt. 3d.  
 p. 262.

The pursuers observe on these quotations, " *That the circum-  
 stance of the same piece of dress in both children being different in  
 quality from the rest is most striking.*" One cannot but be struck  
 with this assertion. The undermost swaddling-cloth of all chil-  
 dren is of different quality from the rest, for it is linen. By re-  
 ferring to the word *lange* in Richelet's Dictionary, we may learn  
 how a French child is dressed. A French child has three *langes* ;  
 the outermost is flannel ; the next within it is sometimes flannel,  
 but generally dimmity ; the third, next the shirt, is linen, either  
 plain or quilted, but so generally quilted, that this piece is usually  
 called *le lange piqué*. In England it is always quilted, and in the  
 nurse's language is called the child's Bed. The gentleman who took  
 Mignon's child, though he did not spare expence, brought only a  
 piece of double linen to put next the child's shirt : this Mad. Mig-  
 non did not approve : she put on him her own lange piqué, and  
 fastened it with her own band or roller, " pour soutenir ses reins."

<sup>k</sup> P. P. 222. L.

<sup>l</sup> — 248. B.

— 196 L.

— 200. D.

This was all the change she made : the gentleman had brought le  
 lange de futaine <sup>k</sup>, and all other parts of the dress proper and even  
 magnificent <sup>l</sup>.

Nurse Favre is embarrassed with the English manner of swad-  
 dling : instead of flannel, dimmity, and linen, our nurses put dim-  
 mity, flannel, and linen ; and the outermost swaddling-cloth of  
 dimmity is large and loose, and the child is sometimes left with-  
 out it ; as lady Jane's child probably was, when the French nurse  
 received it in the month of July. This led her to compare the  
 two coverings of flannel and quilted linen, which she found up-  
 on the child, with the two outermost of the trois langes used in  
 a French nursery. She first took off the flannel, and then came to  
 the *lange piqué*, when she expected dimmity. This was plainly

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† " She observed, that in place of a quilted swaddling-cloth, they had only brought a  
 " piece of double linen, like a pillow-case ; upon which she said, that it was not sufficient to  
 " support the reins of her child ; upon which the deponent put on the child that which she  
 " had brought, and put on him a band of her own, because it was stronger than theirs for  
 " supporting the child's reins."



the case ; for both an English and a French child have always *trois langes*, three swaddling-cloths, though in a different order : yet nurse Favre mentions only two ; because the loose outer covering of lady Jane's child did not correspond to her idea of a French *lange*. What she remarks in Archibald's dress, as improper for the children " *des gens comme il faut*," was the *laine*, common flannel, instead of *moleton*, swan-skin ; and this happened only because in England the flannel is not the outer covering of parade, and in France it is. What Mad. Mignon left upon her child was only linen, over which she put the roller. In Mr. D'Anjou's report it is called " *le lange piqué*," a piece of dress, which has nothing in it particular ; but is common to all children, as well English as French. The writer of these papers had not troubled himself to investigate this circumstance, if he had not suspected what he now knows, that nurse Favre's remark was founded on the difference of the English and French nursery ; and was a proof, that the child's cloaths were really made by lady Jane's servants, and put on by the care of Mrs. Hewit. P. P. 1101.1.

Notwithstanding this positive evidence, that what nurse Favre observed as improper was flannel ; and that what Mad. Mignon left on her child was linen ; we are still told, in the eloquent language of Mr. Anderson, p. 227 (a), " that the circumstance of " the child's dress, deposed to by Mignon, and confirmed by Mad. Favre, is remarkable." If the writer of these papers understands what is meant by confirming the child's dress, the person here quoted would have us to believe, that nurse Favre criticised the same piece of dress, which Mad. Mignon left on her child.

## S E C T. IX.

*Of the time of the enlèvement of Mignon's child.*

THE next thing to be considered is the time. If the father and mother of the child may be believed, this can be no other than Thursday July 11th 1748. The father swears positively, that it was on a Thursday<sup>a</sup> that the child was lent, as he calls it ; " Croit<sup>b</sup> que c'étoit le 9<sup>c</sup> ou 10 Juillet ; croit que l'enfant n'a-<sup>c</sup> voit que 12<sup>d</sup> ou 13 jours tout au plus, étant né le 28 Juin \*." <sup>a</sup>P. P. 234. B. <sup>b</sup>—236. C. <sup>c</sup>—234. B. <sup>d</sup>—236. B.

(a) Lord Eliock.

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\* " Believes, that it was the 9th or 10th of July ; believes, that the child was only twelve or thirteen days old at most, as he was born the 28th of June."

\* P.P. 229. E. The mother swears, “ que l'enfant pouvoit avoir 13 ou 14 jours, attendu qu'il étoit né le 28 Juin 1748 ; & qu'elle croit, “ que le jour qu'elle donna l'enfant étoit le 9 ou 10 de Juillet, “ qu'elle compte même que c'étoit un Jeudi †.” These witnesses certainly speak of a matter within their own knowledge ; and, if we credit them, leave no doubt that the child was taken away on Thursday the 11th of July 1748, when it was thirteen days old.

But this date of the enlevement is inconsistent with the alibi evidence of Godefroi ; the pursuers therefore retire to their old logic, and, as they wished to prove that Sanry's child was taken away a week sooner than their own evidence had declared, they now insist that Mignon's child was taken away a week later than all their own witnesses have sworn it was.

— 218. H. In order to this they observe, that several of the witnesses to the time date the enlevement by counting backwards from the feast of St. Clair, the patroness of the glass manufactory. St. Clair's day is regularly July 18 ; but it appears by the books of the fraternity, that this feast was deferred in 1748 till July 22. Mr. Mortier and his register were not produced in evidence by the — 218. B. pursuers till May 20 1765, when Mr. Duruiffeau's evidence had failed them, and they were determined to remove the alibi proof from Michel's to Godefroi's. The witnesses to the Mignon-story had all been examined the winter before ; and it is to be observed, — 144. G. that not one of these witnesses take notice of the change in the day of the feast ; they speak generally of St. Clair's day. The pursuers however would have us understand them to reckon, not from the ordinary day of the feast July the 18th, but from the day the feast was held in 1748, which would bring the date of the enlevement four days later than the words at first sight seem to mean ; from hence they take the liberty to shift it seven days later, and fix it at last on St. Clair's day, July 18, only four days before the feast was held.

But, unfortunately for the pursuers, the father and mother of the child, the only living witnesses to the fact who mention the time, do not speak of St. Clair's day ; but reckon forward from the child's birth. The authority of the other witnesses is founded on their report and common fame : such as it is, it either confirms the parents reckoning, or overthrows the whole application of this story to Sir John Stewart.

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† “ That the child might be about thirteen or fourteen days old, as he was born the 28th of June 1748 ; and believes, that the day she gave away the child was the 9th or 10th of July ; and even thinks that it was on a Thursday.”



For instance, Mad. D'Estamps, the mother of Mad. Charlan, P.P. 191. E. says it happened when Antoine Charlan, the first boy who was — ditto, A. shewn to the gentleman, was two months old. He was born May the 22d: this carries the enlevement to July the 22d or 23d, when sir John Stewart was at Michel's with the child, and St. Clair's feast was past.

Mad. Faillo, sister to Mad. Charlan, says, Antoine Charlan was — 192. L. not more than six weeks old; which sets the enlevement on the — 1104. F. 3d or 4th of July; before sir John Stewart came to Paris: and with her Mad. Charlan herself concurred.

Mary Guinette swears, it was a week or a fortnight before St. Clair's day, which, counting from July 22d, carries back the enlevement to the 15th or 8th July. — 195. D.

Mad. Odeneau, Mignon's landlady, says it was some days before the feast of St. Clair. — 199. L.

Mad. Flon, who lent Mad. Mignon her child to preserve her milk, says, the child was 12 or 15 days old; which puts the enlevement between the 10th and the 13th July. — 201. G.

Mad. Dumont says, that the child was sixteen or seventeen days old, or three weeks; that it was given away before the feast of St. Clair, which is always on the 18th of July. — 204. E.

Mad. Sommet believes, that the child was three weeks or a month old; which places the enlevement between the 19th and 28th July. — 206. G. — 214. G.

Mad. Baudouin, Mad. Mignon's sister, says, she knows the child was twelve or thirteen days old; which fixes the time to the 10th or 11th of July.

This detail may appear probably of little consequence to the real merits of the cause; it will serve however as an instance to shew, how easy it is for an able advocate to create a proof without evidence, or even against it. For of these nine witnesses only Mad. Odeneau, who speaks quite indeterminately, can serve the pursuers. Four of them expressly support the Mignons' evidence; and the Charlans entirely exclude the application of this story to sir John Stewart.

There is still a circumstance relative to the time of the enlevement, which surely deserves attention. Mad. Mignon has accidentally dropped a word, in her deposition, about a certain mass. This too was amongst the first circumstances, which she told the pursuers' agent on August 9th 1763. She says of this mass, "Elle  
" la

P.P. 1102. B. “ la fit dire au St. Esprit avant de donner son enfant, le jour qu’elle  
 — 228. F. “ le donna, pour savoir ce que Dieu lui inspireroit \*.”

D. P. 255. B. Mr. de la Haye, the sacristan of the hospital of St. Esprit, has searched his register, and finds, that the first mass said in the name of Mad. Mignon after the birth of the child was on March 10th 1749. The register contains these words: “ 1749, 10 Mars  
 — 300. A. “ Mde. Mignon — lum. —” which Mr. de la Haye explains to  
 — 300. G. mean, to implore the light of the Holy Ghost: exactly denoting the same intention, which Mad. Mignon acknowledges in her deposition, “ pour savoir ce que Dieu lui inspireroit.” This is the only record, which can be produced, to fix the date of the fact; it is a full proof that Mad. Mignon has missed the truth, either in the words just quoted, or in the date she now gives to the enlevement. All this ought to be considered; and it is remarkable that the pursuers, who spend so many pages in criticisms about the child’s dress, and change of eyes and complexion, pass over Mr. de la Haye and his register in absolute silence, without furnishing us with any one pretext, why we should not believe him.

Several circumstances concur to countenance this date. The pursuers are sensible, that Mad. Mignon’s walk with her child was pretty fatiguing for a woman who had not lain in quite a fortnight; and this is one reason they give for removing the date of the enlevement to July 18. They bring persons of skill and credit to attest, that the eyes and complexion of children are not fixed and determinate, till they are six weeks old; and yet all the witnesses agree, that the eyes and complexion of Mignon’s child were fixed, before he was sold. Several persons too have mentioned, that they saw the child, when he was two months or four months old. And Mad. Mignon herself has said oddly enough, “ qu’on lui auroit donné trois mois lorsqu’il a été en-  
 P.P. 216. G. — 475. E. — 481. A. levé †.”

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\* “ That she caused it to be said at the church of St. Esprit, on the same day, but before, she gave away the child, to know what God would inspire her to do.”

† “ That one would have taken him for a child of three months old, when he was taken away.”



S E C T. X.

*Remarks on the parole proof in Mignon's case.*

SUCH is the appearance of the case upon supposition, that the witnesses are people of credit, if the reader can be candid enough to make such a supposition, and to charge them only with such mistakes as may naturally arise from a defect of memory. There is not one circumstance, on which we can ground the application of this story to sir John Stewart, lady Jane, and Mrs. Hewit. It is certain the gentleman and the young lady, who carried off Mignon's child, could not be sir John, lady Jane, or Mrs. Hewit; and that Mr. Douglas cannot be Mignon's child, because the description of the persons are admitted to be totally different; and Mignon's child was fair, with blue eyes, and white hair; and Mr. Douglas was brown, with dark brown eyes, and black hair. There is nothing mentioned in Almon's book, but a certain critical coincidence of time; and how far that is ascertained, may be seen from what is already written. The parole testimony certainly fixes it to July the 11th 1748; March the 10th 1749 has its claim too; but the whole account of July the 18th 1748 is a mere fiction of the pursuers.

S E C T. XI.

*Of the general character of the Mignons.*

THIS case comes now to be tried on another issue. It would be injustice to the parties not to consider how far these witnesses are liable to the charge of perjury. The defender has examined seven or eight witnesses with the single intent to prove them bribed and perjured. The pursuers, besides an apology for Mr. Andrew Stuart at the end of their memorial, have examined several witnesses to shew, in what manner the story came out; and that, let the witnesses be perjured or no, the conduct of their agent cannot be impeached. We must then examine these discoveries in the order in which they were made.

F

But

P. P. 230. H. But first we should remember, that it is plainly proved, that the  
 — 237. H. child was sold; and that there is a good deal of chicanery in the  
 — 1087. L. witnesses to shift the guilt from one to the other. The three  
 — 196. E. living witnesses are all accomplices. Mr. Andrew Stuart in his  
 journal tells us, “that Mad. Edouard seemed to have some fears  
 “about this affair affecting herself;” and describes her as “frail both  
 “in body and mind.” Mad. Guynette (who is dead) and the  
 Mignons were the principal actors; and they wished to make  
 Mad. Charlan as guilty as the rest.

Next we may observe, that the Mignons are, exclusive of the  
 — 215. E. business of selling their child, of very bad characters. Mad. Mig-  
 non is spoken of very unfavourably by her own sister; and Mr.  
 D. P. 246. D. Filleul, the inspector-general of the glass manufactory, says, that  
 he dismissed Mignon and his two sons from the manufactory in  
 1758 for the thefts of the sons.

Such were the persons, who came into this cause at the sum-  
 mons of that important instrument of civil and ecclesiastical en-  
 quiry, the Monitoire.

## S E C T. XII.

### *Of the Monitoire.*

P. App. P. 43. **T**HERE is a vindication of the Monitoire in the sixth section  
 of the appendix to the pursuers memorial. The pursuers vin-  
 dicate the Monitoire, first by the customs and laws of France;  
 they love to justify themselves by French law; secondly, by the  
 nature and construction of the piece; they tell us, what a Mo-  
 nitoire should be. It can be no injustice to either party to examine,  
 how far the present Monitoire agrees with the general rules laid  
 down for this mode of composition.

They define a Monitoire to be, a state of the facts, which are  
 the subject of the law-suit; drawn up, with an injunction, by the  
 official, &c. &c.

The whole subject of this law-suit may be stated in the follow-  
 ing alternative; Whether lady Jane was delivered of these children  
 on July 10 1748, at Mad. Le Brun's; or whether she bought or  
 stole them from their real parents.

The



The *Monitoire* contains the following particulars: 1st. Under the designation of “\*un quidam Ecoffois, sa femme, & la demoiselle de compagne,” there is inserted a very minute relation of the conduct of fir John Stewart, lady Jane, and Mrs. Hewit, in Holland, at Aix and at Rheims, from the time of their marriage to the time they finally left France. D.P. 1009. A. to 1010. C. & 1012. D. to 1013. B.

2dly. There is an account of their “double demeure” at Godefrois’s, and at Michel’s, from July 8 to July 14 1748: and that the delivery at Le Brun’s was a supposition, and an “imposture demasquée.” — 1010. D. F.

3dly. There is a positive assertion, that the eldest pretended twin was “pris à Paris, ou dans les environs dans le mois de Juillet 1748 †.” — 1012. B.

4thly. There is a long account of the other enlèvement, with all the circumstances and dates, as they had then been settled between Dr. Cotterel and Mr. Andrew Stuart, positively and solemnly applied to those persons, who had lived at Aix, Rheims, &c. in the manner described. — 1013. 15.

Let us see, how far this can be considered as a state of the facts, which are the subject of the law-suit.

1st. It is plain, that the first particular here mentioned serves no good purpose. The facts related in it, were transacted out of the jurisdiction of the archbishop of Paris; and no one at Aix would go into revelation at his injunction; they could be of no use to the persons who might have lost their child; for if the parents of the stolen child had known any one circumstance of the journeys and residence of the persons who stole him, they would long since have found their child. But these facts served to bring the Paris accusation home to fir John and lady Jane; and to point them out as the guilty persons to every one of their acquaintance, who might have been only an hour in their company in the course of three years; they served to intimidate weak minds, who might hereafter be called in evidence to the pregnancy, or convalescence. It is amazing, that the pursuers memorialist should assert, that the persons are “neither named or designed, agreeable to the ordinance of Lewis XIV.” He knows too well the meaning of his words, and in the next line shifts his phrase, and tells us, “that the descriptions of the persons are no more particular, than was App. 48.

\* “A Scotchman, his wife, and her female companion.”

† “Picked up at Paris, or in the neighbourhood of it, in the month of July 1748.”

“ requisite to render the facts intelligible.” The *Monitoire* was dispersed in France, Germany, and Holland.

2dly. The next particular seems purely calculated to prevent the appearance of Mad. Le Brun, if by chance the *Monitoire* should have come to her knowledge. It is here positively asserted *that the whole lying in* at Le Brun’s was an imposture already unmasked. If Mad. Le Brun had read this, what could she have thought, but that some cheats had made use of her name without her knowledge? She was assured, that the persons here mentioned were at Godefroi’s or Michel’s on the 10th of July 1748; and therefore they could not be the same who lodged at her house, but artful villains, who had heard what passed in her house, and adopted it. She could not even have a suspicion, that this case related to her, unless perchance she had heard her guests came from Rheims; which was very unlikely, as they were said to come from another lodging in Paris, and to have quitted her in disgust to go to a fresh lodging in the same place.

In fact, none of the witnesses to the residence of sir John Stewart and lady Jane were considered, as obliged by the *Monitoire* to go in revelation; for the imposture was already unmasked. This piece relates purely to the persons who knew any thing relating to the subtilization or stealing of children. The Sanrys and the Mignons went in revelation. The Godefrois and the Michels did not.

3dly. This particular served to confine the enquiry to the month of July 1748. Had the enquiry been made more extensive, the pursuers most probably would have lost their presumptive argument from the pretended coincidence of time, and their triumph over the industry and assiduity of the defenders agents, who had not found, what they had no means to find, any other enlevement than those of the children of Mignon and Sanry. It did besides serve to fix an indeterminate evidence; as what had passed already about Sanry’s child, shewed that it was impossible to come at the precise knowledge of the date of a fact at the distance of sixteen years by parole testimony alone.

P. Mem. pt. 3.  
P. 295.

4thly. The circumstances of the enlevement of Sanry’s child were already known, and yet they are here published *ad invidiam*; and take up near half the *Monitoire*. The use, which they served, was to regulate the conduct of the witnesses, when they should be afterwards examined to this fact. Whoever will read the depositions of Mr. and Mad. Sanry, who are only common beggars, and compare them with the jargon of the Mignons, and other low witnesses,



witnesſes, will be convinced, they have been helped to tell their ſtory, which indeed was in every one's mouth, from the king to the beggar, from the time it was here publiſhed in the *Monitoire*.

From this view it appears, that had the *Monitoire* ſimply confined itſelf to enquire after evidence to the facts, which are the ſubject of the law-ſuit; had it contained no designation of the perſons, but in general called on all, who knew any thing of Mad. Le Brun and Pierre La Marre on the one hand, or of the enlevement of children in 1748 and 1749 on the other, to go to revelation; it had been a fair, upright, and uſeful method of procuring information to the court. But the preſent compoſition is contrary to the ordonnance of Lewis XIV; it is unjuſtifiably partial to the purſuers; it contains a minute designation of the perſons accuſed, and a ſolemn aſſeveration of their guilt: It contains many aſſertions which are falſe; it contains a poſitive information, that the child was certainly taken away in July 1748; it is calculated to raiſe a popular cry againſt Mr. Douglas; it ſerved to inſtruct ſome witneſſes, to intimidate others, and caſts a ſtanding diſgrace on the authors and procurers of it.

## S E C T. XIII.

*Of the Exposé des Faits pour M. De Douglas.*

THE purſuers make an apology for the *Monitoire* by conſtraiſting it with an *Exposé des Faits* diſtributed at Rheims in May 1763 by the friends of Mr. Douglas: but this juſtification will appear incompetent to any one who compares the two pieces, for the following reaſons:

1ſt. The *Exposé* is anonymous; the *Monitoire* has the much abuſed ſanction of eccleſiaſtical authority.

2dly. The *Exposé* contains only a ſhort and true narrative of what had been already atteſted at the ſervice in Scotland, and which had been long publiſhed there, if not by the order, at leaſt by the permiſſion, of the court. The *Monitoire* contains a narrative of facts, which were to come in proof; moſt of which are falſe.

3dly. The *Exposé* cautiously avoids every circumſtance which paſſed at Rheims, or Aix, to which the perſons, to whom the paper was diſtributed, might be brought to depoſe. Near half of the

App. 49.  
P. P. 549.

the Monitoire is employed in dictating a plausible story to the witnesses, who were to be first examined after its publication. The pursuers agents do in all their French papers represent the service, as a matter of form. The defender would surely have been very justifiable, if he had translated the whole service into French, and shewn the king, the parliament, and the nation the real truth; that the verdict passed upon full evidence, when the agents of duke Hamilton and lord Selkirk attended, and cross examined the witnesses.

## S E C T. XIV.

*Of the discovery of Mignon's enlevement.*

**T**HE Monitoire bears date the 9th of July 1768: it was fixed up in the streets of Paris, and published in the churches on Sunday July the 24th, and the two following Sundays.

D. P. 228. D. On the Monday and Tuesday, on which the Monitoire first appeared, Pierre Baudouin, son-in-law to Mad. Mignon's sister, had occasion to read it. This witness was not in Paris at the time of the enlevement, and only knew of it by the report of his relations.

— 213. L. He spoke of what he had read to his mother-in-law; and Mad. Baudouin went to acquaint her sister. Mad. Mignon came to her and her son-in-law the same day: after some words and tears were spent, she took their advice, and went in revelation. At this first interview, it should seem, the curate made that singular reflection, which has been quoted already, and sent her back for her husband.

— 214. C. The next day (as Mr. De Beaurecueil the curate relates), which was Thursday July the 28th, the husband and wife came together, and made their revelations, which he combined together in one act.

— 214. F. On August the 5th, Mr. De Beaurecueil was at the archbishop's, when he told Mr. D'Outrement, that he had received a revelation, "qui paroissoit toucher beaucoup le but du Monitoire." Mr. D'Outrement ran with the news to Mr. Andrew Stuart; and Mr. Stuart went the next day to the curate's, and prevailed upon him, after some conversation, to shew him the revelation which had been made.

— 597. G. P. P. 597. C.

This clergyman is represented by Mr. Stuart as a man of good sense; but surely he is of a very particular conscience. In his deposition,



deposition, after giving several good reasons against shewing the revelation (which appear also in Mr. Stuart's Journal), he goes on, “ \* Que neanmoins s'étant convaincu par la conversation de  
“ l'interet que Mons. Stuart avoit à cette affaire, il lui fit lecture  
“ de la revelation.” This surely was one reason more against a partial communication : and yet after all, when he is publicly interrogated by both parties about the facts and circumstances contained in the revelations, he makes this odd excuse : “ † Que la  
“ crainte de compromettre son ministere, l'engage à demander un  
“ delai, pendant lequel il se consultera ; & assure en même tems  
“ les deux parties du desir qu'il auroit de les satisfaire à tous  
“ egards.” This delay has lasted till now ; and the defender has never been informed of the contents of these revelations.”

On the 8th of August (as the date stands in Mr. Stuart's Journal) Mignon and his wife returned to the curate ; and described the figure and age of the persons who took away their child, which he joined to their former revelation. He charged them to send Marie Guynette in revelation. Marie Guynette says, she received the curate's message by Mad. Mignon the same day ; that after this, the curate sent her a second message ; upon which she went, about two hours before she saw Mr. Andrew Stuart in the porter's lodge ; which was on August the 9th. Mr. Kamper the Swiss, swears, that she had told him the evening before this interview, that she had then been in revelation ; when it appears she had not.

At six in the evening of this 9th of August 1763, Mr. Andrew Stuart, and the other gentlemen in the pursuers interest, assembled in the Swiss's lodge of the glass manufactory. The Swiss recommended them to Marie Guynette, who came first, and was sent to fetch Mr. Mignon : they each of them told what they knew, in the presence of the other. After this, Mr. Mignon conducted them to his wife, who told her story, in the presence of her husband, just as he had done before, with only one addition about the child's cloaths. They went next to Mad. Charlan's, where they found Marie Guynette, who had left them when they went to Mignon's, and a crowd of people, whom she had instructed so

\* “ That nevertheless being convinced by the conversation of the interest which Mr. Stuart had in this affair, he read the revelations to him.”

† “ That the fear of transgressing the duty of his office obliges him to ask a delay, till he takes advice about it ; in the mean time, he assures the parties of the desire he has to satisfy them in every thing.”

particularly in the business of their visit, that on their first enquiry  
 P.P. 1103. E. for Mad. Charlan, she was pointed out to them *comme par accla-*  
 — 1103. F. *mation*. Mad. Charlan told them what she knew. From hence  
 they went to Mad. Edouard, who was not apprised of their coming.  
 They just got from her a confession, that some such thing had  
 — 1104. I. passed in her house. She does not seem to have remembered quite  
 so much at this time, as the very little she has since deposed.

An account of this transaction was soon after drawn up by Mr.  
 D'Anjou, and approved by the other gentlemen, who had been  
 present. It was soon sent to Mr. Davidson at Edinburgh, who  
 exhibited it on oath July 31st 1764, and it is printed in the Ap-  
 — 1097. G. pendix to the Pursuers Proof.

In this account, most of the facts, on which the application of  
 the story to sir John Stewart is grounded, are the same as have  
 — 1098. E. afterwards appeared in evidence. The deux \* jeunes enfants nou-  
 — 1103. L. vellement nés; the 11th of July settled by Mad. Mignon's con-  
 — 1099. D. jecture; and the foreign accent, and age of the gentleman. The  
 account is notwithstanding justly chargeable with partiality to the  
 side which these gentlemen supported. It represents the witnesses  
 as honest deluded people, which they certainly were not; as  
 friends and fellow-sufferers in the trick, which they certainly  
 were not; and by a slight change in a circumstance or two makes  
 the whole story consistent, which it certainly is not.

A very reasonable cause of suspicion against the story of the  
 twins, and children nouvellement nés, arises from the conduct  
 of Mad. Guynette. If the gentleman wanted two children, and  
 she knew of two children such as he wanted, why did she not ap-  
 ply to both the mothers at once? If he wanted a child nouvelle-  
 ment né, how came she to overlook her friend Mad. Mignon,  
 who lived in the same house, and apply to Mad. Charlan, whose  
 child she very well knew was five weeks older than Mignon's,  
 and could by no means be called nouvellement né? These cir-  
 — 1098. I. cumstances are rendered smooth and plausible in Mr. D'Anjou's  
 Minute; where Marie Guynette is made to say, “ † Que sa mere  
 “ fit la proposition à deux femmes; que ces deux femmes ayant  
 “ écouté la proposition, la femme Charlan s'y trouva la pre-

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\* “ The two young children new born.”

† “ That her mother made the proposition to two women; and these two women having  
 “ listened to the proposition, Mad. Charlan came there first.”



“miere.” All this is said in express contradiction to the oath of the said Marie Guynette; who swears, that her mother applied first to Mad. Charlan, who brought her child first; but the gentleman and she did not agree; “\* et qu’en suite sa mere dit alors — 1094. B.  
“à la dame Edouard” (of which Mad. Edouard does not remember a word) “& au monsieur, qu’elle connoissoit une autre femme  
“nommé Mignon.”

Again, in order to excuse the Mignons for having given away their child, without knowing to whom, they say, that they both asked the gentleman’s address: which is directly contrary to the oaths of both Mignon and his wife. — 1099. H.  
— 230. I.  
— 236. D.

These instances, and many others which might be pointed out, will teach us, what to say to the pursuers proposal of accepting this paper as evidence in process; and how to understand their assertion, that it exactly corresponds with the depositions; and that it was drawn up for the private use of the pursuers. A paper drawn up for the private use of the pursuers would have contained all the discrepancies of the witnesses with the most rigid minuteness, as what deserved the particular attention of the agents in the cause. The general facts, in which all agreed, might have been left to shift for themselves. This paper was drawn up at least for the use of the counsel in Scotland, to whom it was sent: and when we remember the care which was taken to publish the story of Sanry’s child, before the witnesses were examined; and when we see the very long and unnecessary and extravagant compliments paid in this paper to the honesty, the disinterestedness, and even to the persons of Mr. and Mad. Mignon, one cannot help supposing, that some unforeseen accidents (perhaps Mr. Fil-leu’s account, and the quarrel between Marie Guynette and the Charlans) have prevented its being used in France. P. Mem. pt 3.  
P. 223. 224.  
App. to Pur.  
Mem. p. 61.  
P. P. 1100. I.  
— 1101. D.  
— 1103. B.

To resume our narrative: The day after the conference Mr. Mignon called on Mr. Andrew Stuart, and told him, what he had not ventured to say before Marie Guynette, that it was believed, that Mad. Guynette was very well paid for procuring the child. — 1085. K.  
The story was now publicly known, and in every one’s mouth; — 1089. H.  
Mad. Mignon was frightened, and talked of absenting herself till the affair was over; Mad. Edouard covered herself in her ignorance. — 1087. C.  
Marie Guynette, who had nothing to fear, quoted her

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\* “And afterwards her mother said to Mad. Edouard and to the gentleman, that she  
“knew another woman called Mignon.”



P. P. 211. L. deceased mother with great freedom, acted openly for the pursuers,  
 — 212. H. and on September the 10th asked for her reward; which Mr.  
 — 1090. L. Andrew Stuart would not give her.

The defender has examined several witnesses, to shew the vast expectations, which the Mignons had, of a reward from the pursuers for reclaiming the child. The writer of these papers declines entering into this subject for several reasons. The idle conversations of Mad. Mignon can never be brought to oppose her oath. She might have great expectations, though nothing was promised; and there might perhaps be a third party behind the curtain, who was deeply interested to lay this enlevement to a stranger's door. It is certain however, that Mad. Mignon frequently applied to Mr. Andrew Stuart for comfort and countenance; and there is not the least reason to mistrust his word, that he never saw her without witnesses. An accident indeed happened, while he was in England, which deserves to be mentioned in Mr. De la Rue's own words; because the pursuers allow, that the affair passed just as he has related it: \* “ Dans un conversation le 30me Sept. 1764 Mad. Mignon dit, qu'elle avoit un memoire qu'elle avoit preté à un personne; qu'etant allé chez le secretaire de Monf. Stuart, elle avoit pris dans le cabinet du dit secretaire, tandis qu'il étoit sorti, un memoire, qu'elle avoit mis dans son corset; et que le secretaire en rentrant lui avoit dit, Vous m'avez volé; sur quoi le secretaire lui en donna un autre.”

This book was the *Receuil des Pieces*; and the pursuers insist, that it would teach her nothing: in this we must differ from them. It would teach her to dissipate her fears, by telling her, that the point in dispute was a mere point of law; † “ et que les vrais peres et meres des deux enfans sont enfin decouverts, et se sont fait connoitre aux defenseurs mêmes du mineur Archibald.”

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\* “ That in the conversation of the 30th September 1764 Mad. Mignon said, that she had a memorial, which she had lent to somebody; that having gone to Mr. Stuart's secretary, she took a memorial in his closet, when he was absent, which she put in her bodice; and the secretary, on coming in, said to her, You have robbed me; whereupon the secretary gave her another.”

† “ That the real fathers and mothers of the two children were at last found, and were known even to the defenders of the minor Archibald.”



S E C T. XV.

*Of the perjuries of the Mignons and Marie Guynette.*

NOTHING more material passed, till the witnesses were called to depose before the Scotch commissioners. Mad. Mignon and her husband were examined the first of this sett, 11th October 1764: though their depositions are printed last.

Mad. Mignon has deposed, “ \* qu’elle n’a jamais lu ou reçu de  
 “ qui que ce soit aucuns imprimés à l’égard de cette affaire; que  
 “ la premiere messe la deposante a fit dire au St. Esprit avant de  
 “ donner son enfant, le jour qu’elle le donnat, pour savoir ce  
 “ que Dieu lui inspireroit (Mr. de la Haye we may remember  
 “ has sworn, that this mass was said March 10th 1749); qu’on  
 “ aura donné à son enfant 3 mois, lorsqu’il a été enlevé; qu’  
 “ après avoir fait sa revelation au curé, elle n’est pas retournée  
 “ chez lui pour y ajouter, ou changer aucune chose; que son  
 “ mari a quitté la manufacture des glaces, parcequ’on avoit  
 “ diminué la salaire des ouvriers; qu’elle n’a parlé de cette affaire  
 “ à la Guynette, qu’après que la ditte Guynette eut fait sa re-  
 “ velation.” All these facts are notoriously false, and plainly  
 calculated to hide the intrigue between her and Guynette, and  
 to leave a greater share of credit to her suspected testimony, than  
 it can deserve, now they are known.

Mr. Mignon has thought proper to depose, † “ que ni lui ni  
 “ sa femme n’ont reçu aucuns imprimés au sujet de ce proces;  
 “ qu’il n’est point retournée chez le curé après sa revelation,”  
 which are false, besides the whole story of his race after the coach,  
 with which he did not venture at the time even to trust his son,  
 who deposes, that his father told him the day after the enleve-  
 ment, ‡ “ que les personnes au quelles il avoit donné son enfant,  
 “ lui avoient indiqué une fausse demeure.”

\* “ That she never read or received from any person whatever any printed paper with  
 “ respect to this affair; that the first mass she caused to be said at the St. Esprit, be-  
 “ fore she gave away her child, on the day she gave him away, to know what God would  
 “ inspire her to do.—That her child would have been taken for one of three months old  
 “ when he was carried away.—That after she had made her revelation to the curate, she  
 “ did not return to add or change any thing in it.—That her husband left the glass-manu-  
 “ factory, because the workmen’s wages were diminished; and that she did not speak to  
 “ Guynette about this affair, till after Guynette had made her revelation.”

† “ That neither he nor his wife have received any printed papers on the subject of this  
 “ process; and that he did not return to the curate after his revelation.”

‡ “ That the persons, to whom he had given his child, had given him a false address.”



As to Marie Guynette, she is a mere hearsay witness : she  
 P.P. 1085. K. quotes her deceased mother, who, by Mr. Mignon's account,  
 — 211. deserved to be hanged : she has besides, as appears by the testi-  
 — 212. mony of two credible witnesses, Mr. and Mad. Canivet, and by  
 — 1090. L. the tacit acknowledgment of Mr. Andrew Stuart, acted publicly  
 — 208. B. as an agent for the pursuers ; which must render her testimony  
 — 196. A. inadmissible : she had her reasons too for telling the Swiss, that  
 a — 196. E. she had been in revelation, when she was not ; and for swearing<sup>a</sup>,  
 that Mad. Charlan would have given her child, if the gentleman  
 would have taken him directly ; contrary to the account of Mad.  
 b — 1103. H. Charlan<sup>b</sup>. The oaths of Mad. D'Estampes<sup>c</sup> and Mad. Faillo<sup>d</sup>, who  
 c — 191. H. all swear positively, that Mad. Charlan refused to give her child, and  
 d — 193. A. to what she herself<sup>e</sup> told the pursuers, when they first met at the  
 e — 1099. A. glass manufactory. Indeed, as the depositions of Mr. and Mad.  
 Mignon are divested of all credit by their numerous perjuries,  
 Marie Guynette's story is of no consequence, as she has owned the  
 instructions she received from Mad. Mignon, even before she  
 went in revelation.

## S E C T. XVI.

*General remarks on the case of Mignon.*

**I**F one was to have recourse to the negative testimony of persons,  
 who were in the way to know the circumstances of the en-  
 levement, and yet did not know them, it might be alledged, that  
 neither Mad. Baudouin, Mad. Mignon's sister ; nor Eugene, Mr.  
 Mignon's son ; nor Mad. Flon, who lent her child to be suckled  
 by Mad. Mignon, and saw her during that period five times a  
 day ; nor Mad. Edouard, in whose house the child was drest ;  
 nor Mad. Odenéau, in whose house Mignon then lived ; ever  
 heard of lending the child, or of the twins. This is a stronger  
 negative testimony than any of those, of which the pursuers  
 make such frequent use.

But the testimony of Mr. Filleu is a little more than a nega-  
 tive testimony. He had occasion seriously to enquire into the  
 character of Mignon, when he dismissed him from the manufac-  
 tory on the general complaint against his sons. He was then told  
 D. P. 246. F. the following particulars : \* “ Que dans le tems que le dit

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\* “ That at the time Mignon gave away his child, the workmen reproached him for  
 “ having sold it ; upon which he kept a profound silence ; but that these reproaches being  
 “ renewed two or three years after, Mignon said he had been cheated in that matter, and  
 “ that he only intended to lend his child ; but having gone to the place eight days after to  
 “ hear of his child, the people were gone off with it.”



“ Mignon avoit livré son enfant, les ouvriers lui avoient fait des  
 “ reproches d’avoir vendu son enfant ; que sur cela il avoit  
 “ gardé un profond silence : mais qu’au bout de deux ou trois  
 “ ans ces reproches s’étant renouvelés, le dit Mignon dit ; qu’-  
 “ il avoit été surpris en cela ; qu’il avoit cru ne faire que prêter  
 “ son enfant ; mais qu’étant allé au bout de 8 jours pour en avoir  
 “ des nouvelles, il avoit trouvé les personnes disparues avec l’en-  
 “ fant.” If this be true, and it surely deserves credit, the story  
 of lending the child was certainly three years younger than the  
 enlèvement ; and the rest may well be supposed sixteen.

It seems pretty clear, that the story of the lady delivered of  
 twins on July 10th, one of whom was to be supposed weak and  
 at nurse, is the “ *imposture démasqué*” of the *Monitoire*. Where  
 the child got his blue eyes, if he had them not from nature, is no-  
 where discovered. Indeed the pointed description of the child’s  
 person, which appears in almost every deposition, particularly in  
 Mad. Flon’s and Mad. Odeneau’s, (people against whom there  
 is no reproach) seems to be a circumstance, which has escaped  
 the general taint of perjury.

It is remarkable, that, notwithstanding the violent step taken  
 in publishing the *Monitoire*, and the hurry of the curate in trans-  
 mitting the revelations to the procureur-general, this story never  
 came before the *Tournelle*. It did not even make a part of the  
 civil process in Scotland till September 27th 1764, near four-  
 teen months after it first came out.

The story has become lately of more importance. The reader  
 will have observed with what indifference it is treated in Almon’s  
 book ; and how many facts are misrepresented in Anderson’s,  
 that something may be grounded on the story. One instance of  
 this occurs at page 449 (a), which is put into the mouth of a  
 person, who is made to own, there are differences ; but then he  
 adds, “ those differences are mentioned by the witnesses, to whose  
 “ testimony the defender has chiefly objected ; by the perjured  
 “ Mignons : set their testimony aside, and the connection be-  
 “ tween what passed in the Fauxbourg St. Antoine, and at the  
 “ hotel D’Anjou, is wonderful.” The direct contrary to this  
 is true : set aside the testimony of the perjured Mignons, and  
 there remains no living witness to the enlèvement ; for all the  
 rest are mere witnesses to Mignon’s own lie. But these witnesses,  
 who knew nothing of the enlèvement, but what they heard at  
 second-hand from a man of no credit, are many of them direct

(a) Lord Hailes.

and positive witnesses to the person of the child ; and shew that he was a child very different from Mr. Douglas.

*The Conclusion to the Pursuers First Assertion.*

Neither the pursuers themselves in their Memorial, nor any of the speakers in the two publications of Mess. Almon and Anderson, have been so hardy as to assert, that these enlevements are brought home to sir John Stewart: yet they are considered by some of them, as circumstances of weight. “ Though they are not “ by themselves sufficient, says one \*, yet I cannot get them out of “ my mind.” Anderson, p. 41. And again p. 42, “ In a circum- “ stantiate evidence, circumstances must be laid together. A se- “ parate link may bear a challenge, and yet the whole remain firm “ and impregnable.” Very true; every link may be challenged, and yet the whole remain firm and impregnable. And if every link bears the challenge, the whole not only may, but must, remain firm and impregnable. But what is this to the purpose? Many a link in this chain has been challenged, and none of them have born it; and we are sure by positive evidence, that these enlevements cannot relate to sir John Stewart or his company.—One is sorry to add, that the pursuers’ agents have suffered not a little in their credit by the injudicious publication of an arbitrary inquisitorial Monitoire, and by the introduction of these mean and perjured witnesses into the proof.

\* Lord President.

SECOND



SECOND ASSERTION OF THE PURSUERS.

That lady Jane was not at Le Brun's on the 10th of July 1748, but in good health at another place: or, as it is stated at large in the pursuers Condescendance of Facts, "That fir No. 16. John, lady Jane, and Mrs. Hewit did not lodge at the house of Mad. Le Brun, Fauxbourg St. Germain, in the month of July 1748 N. S. but that they were at the house of Mr. Godefroi, and at the house of Mr. Michel at times and during periods inconsistent with the possibility of lady Jane's having been delivered at the house of Mad. Le Brun upon the 10th of July 1748 N. S. or of her having remained in childbed for nine or ten days after such delivery; and that, during that period, there was not either at Godefroi's or at Michel's any delivery, any indisposition, or any appearance of a woman with child, or of one recently delivered."

It is admitted, that fir John, lady Jane, and Mrs. Hewit, arrived at Godefroi's on the evening of the 4th of July; and that they staid there about three days and three nights; and that they were at Michel's on the 20th. The question is, Where were they from the 7th to the 20th of this month? P. P. 252. B.

The pursuers evidence rests partly on the books of the hotels, and partly on the parole testimony of the persons who kept those houses. As they have alledged, 1st, that lady Jane was at Michel's on the 10th of July; and 2dly, that she was at Godefroi's; it is right to examine each plea in the order it was proposed.

S E C T. I.

*Of the first discovery of Michel and Godefroi in October 1762.*

AT the beginning of October 1762, (as we are told in a Memoire à consulter drawn up in November following) Mr. Andrew Stuart discovered, that fir John Stewart had lodged at Michel's in July 1748. On the 12th of October 1762 he paid his first visit to that hotel in company of Mr. Buhot, an officer of police: upon enquiry, whether fir John and lady Jane had lodged there, and whether the police book for the year 1748 still existed, the Michels answered readily in the affirmative, and produced the book. In this book was found an article, from which the pursuers printed these words in their Memoire à consulter. App. to D: Mem. p. 28.

" Mr.

p. 29.

“ Mr. Fluralt, Ecoſſois, & ſa famille entré le huit Juillet 1748.” Mad. Michel is alſo ſaid to have told theſe gentlemen, “ \* Il me ſemble, que c'étoit le monſieur lui-même, qui écrivit ce que vous voyez là.” After which it is added, “ ſur ce que la femme Michel avoit dit, le tuteur du duc d'Hamilton regarda attentivement l'écriture dans le livre, & demeura perſuadé que ces mots, *Mr. Fluralt, Ecoſſois, & ſa famille entré le 8 Juillet 1748,* ſont de la main du chevalier Stewart, ayant eu ſouvent occaſion de voir ſon écriture.”

p. 30.

Mr. Andrew Stuart among other things ſays, Mad. Michel told him, “ † qu'elle ſe ſouvient cependant d'avoir entendu dire au monſieur, que ſa tête étoit preſque caſſée du bruit qu'il avoit entendu pendant *quatre jours* dans un autre hotel, où il avoit demuré avant que de venir à l'hotel d'Anjou ; & elle penſe qu'il faiſoit mention de l'hotel de Chalons.”

App. to Pur.  
Mem. p. 19.

App. to Def.  
Mem. p. 35.

In conſequence of this information it appears, that Mr. Andrew Stuart went immediately to Godefroi's. It is certain, that at this time Mr. Godefroi remembered nothing about ſir John Stewart or lady Jane ; for at the end of this Memoir we are told, “ ‡ il ſeroit à ſouhaiter, que l'on peut decouvrir dans quel hotel Monſ. & Mad. Stewart ſont demeurés pendant les quatre premiers jours de leur arrivée à Paris. Juſqu'ici l'on ignore ;” that is in November 1762. Notwithſtanding this the learned author of the Sequel to the purſuers' Memorial amuſes his reader, and tells him, that when Godefroi was firſt ſpoken to on this ſubject, he recollected himſelf, and ſaid, “ that he remembered that theſe perſons had lodged in his houſe, and turned over his houſhold-book, and pointed out the accounts, which he has ſince produced in proceſs :” an aſſertion which is poſitively contradicted by the Memoire à conſulter already mentioned.

P. 19.

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\* “ It appears to me that it was the gentleman himſelf, who wrote what you ſee there— upon which the tutor of duke Hamilton looked attentively at the writing in the book, and was perſuaded, that theſe words *Mr. Fluralt, a Scotchman, and his family,* entered the 8th of July 1748, were of ſir John Stewart's hand-writing, having often had occaſion to ſee his writing.”

† “ That ſhe remembered however to have heard the gentleman ſay, that his head was almoſt ſplit with the noiſe, which he had heard for four days in another hotel, where he lived before he came to the hotel d'Anjou ; and ſhe thinks he mentioned the hotel de Chalons.”

‡ “ It were to be wiſhed, that one could diſcover in what houſe Mr. and Mad. Stewart lived during the firſt four days after their arrival at Paris ; which has not yet been diſcovered.”



## S E C T. II.

*Of the delivery of Michel's book to the pursuers.*

THE entry at Michel's, as it was explained by Mr. Andrew Stuart, was the one point of proof, on which the cause began. Mr. Stuart had an officer of police by his side in all his enquiries; and the first use which he made of his credit with the police was to get possession of the books, on which the cause was then supposed to rest. Michel's book was delivered to Mr. Buhot on the 8th of November 1762, before the Actions of Reduction were commenced in Scotland. D.P. 1058. A.  
P.P. 144. H.  
— 101. B.

But before the lieutenant de police would permit the delivery of a book so important in the cause to the trust of one of the parties, he very justly ordered that the state of the book should be examined by the proper officer of the quarter. Mr. Duruifseau, the commissary, formed a process verbal of what he did, and what he observed; and thus the pursuers' agents became possessed of the only written evidence then discovered; which was intended to prove the residence of lady Jane Douglas to have been in a different place on the 10th of July from that delivered in on the service.

The defender's people indeed complain bitterly of this conduct; but they did not seem to know their own place. Mr. Andrew Stuart considered them as agents for sir John Stewart in the Criminal Process before the Tournelle: and (as he has certified) “ the P. P. 608. F.  
“ laws of France expressly prohibit any communication, directly  
“ or indirectly, to the defender of the pieces in process, until  
“ after a certain period in the cause.” Some people may perhaps imagine, that the counsel for Mr. Douglas, in the Civil Process in Scotland, had nothing to do with the affairs of sir John Stewart or Mrs. Hewit in France; and that such a reply served only to confound the different rules of the two courts, and perplex the administration of justice: however this may be, it is certain, that these books were not open to the defender till the 5th of July 1765; — 604. G.  
— 607. E.  
until, as Mr. Stuart observes, the depositions at Rheims were finished.

## S E C T. III.

*Of the state of the alibi at Michel's, when the suit commenced.*

ON the 20th of November 1762, twelve days after Michel's book had been lodged in safe hands, Mr. Andrew Stuart wrote into Scotland by express, to acquaint the guardians of duke Hamilton with the discoveries he had made, and to advise them to begin the process; and desired their assent to the proposal of beginning a Criminal Process in France. *Vide* the Respondent's Case on the appeal to the house of lords in 1763, p. 2.

D.P. 1016. c. Accordingly Actions of Reduction were commenced in Scotland on the 7th of December 1762; and the premiere plainte to the parliament of Paris bears date the 17th of the same month.

In this first plainte we have the original state of the pursuers' proof, on which the cause was commenced.

Besides the *presumptive proof*, which is so contrived as to be the same at all times, let the state of the facts vary as it may, we have the following account of the alibi evidence.

- 1022. A. “ \* Que le chevalier Stewart, la dite Jeanne Douglas sa femme,  
 “ & la demoiselle Hewit, durent arriver à Paris le quatre du dit  
 “ mois de Juillet, vraisemblablement à l'hotel de Châlons, rue  
 “ St. Martin, où descendent frequemment les voyageurs du ca-  
 “ roffe.
- 1022. B. “ Que le huit du même mois les dites personnes vinrent loger,  
 “ avec un extérieur de mystere, à l'hotel d'Anjou, rue Serpente,  
 “ chez le nommé Michel perruquier (la dite lady Jeanne Douglas  
 “ n'ayant alors aucune apparence ni de grossesse, ni d'accouche-  
 “ ment) & que leur entrée dans le dit hotel est prouvée par le re-  
 “ gistre de l'inspecteur de police, qui porte ces mots, *Mr. Flu-*  
 — e. “ *ralt, Ecoffois, & sa famille entré le huit Juillet mil sept cent*  
 “ *quarante huit* : mots qu'on a lieu de croire avoir été écrits de  
 “ la propre main du sieur Stewart.”

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\* “ That sir John Stewart and lady Jane Douglas, his wife, and Mrs. Hewit, arrived at Paris on the fourth of July, probably at the hotel de Châlons, rue St. Martin; where the passengers in the stage-coach frequently alight.—That the eighth of this month the same persons went to lodge in a mysterious manner at the hotel d'Anjou, rue Serpente, kept by Michel, a barber; lady Jane having then no appearance either of pregnancy, or of delivery; and their entry in this hotel is proved by the register of the inspector of police, which contains these words, *Mr. Fluralt, a Scotchman, and his family, entered the 8th of July, 1748*; words which there is reason to believe were written by sir John Stewart himself.”



There is no reason to doubt, that this fact of the entry at Michel's on the 8th of July, said to be written by sir John Stewart's own hand, was the important discovery sent into Scotland by express on the 20th of November. Indeed it was all which Mr. Andrew Stuart had discovered; unless one should call his having *not discovered* Pierre La Marre and Mad. Le Brun a discovery: it was well worth the pains he had taken; it appeared fatal to the Defender. No man was better qualified to judge of the hand-writing of sir John, than Mr. Andrew Stuart. He examined the book with attention, and made himself answerable to his French counsel, and in consequence to the whole state of France, civil and ecclesiastical, that the entry was written by sir John Stewart. If Sir John and lady Jane had been at Michel's from the 8th of July to the end of the month, it was certain she could not have been delivered of Mr. Douglas and his brother at Le Brun's on the 10th.

## S E C T. IV.

*Of the double logement at Michel's and Godefroi's, as adopted in 1763.*

THIS account suffered some little variation in the year 1763. About this time a general record of police was discovered, in which there was an entry in these words: "12 Juillet, Godefroi D.P. 1037. "à la ville de Châlons, quartier St. Martin, rue St. Martin. "Stuard, gentilhomme Ecoffois, avec sa femme." This record was hastily supposed to afford convincing proofs, that sir John was actually at Godefroi's on the 12th; and gave occasion to the following article in the Monitoire: " \* Qu'ils arriverent, à Paris le — 1010.D. "4 du dit mois de Juillet 1748, & descendirent à l'hotel de Châlons rue St. Martin, où ils resterent obscurément depuis le dit "jour jusqu', & compris le 14 du dit mois; pendant l'intervalle "du quel séjour ils prirent, le 8 du même mois, un autre logement, sous un nom déguisé, à l'hotel d'Anjou rue Serpente, & "y demeurerent mystérieusement, depuis leur entrée jusqu'à la "fin du dit mois, qu'ils quitterent Paris."

This *double logement*, though published in Scotland and by the authority of the magistrate in France, was never brought into

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\* "That they arrived at Paris the 4th of the said month of July, and alighted at the hotel de Châlons, rue St. Martin, where they remained privately till, and including, the 14th of the said month; in the interval of which time, they upon the 8th took another lodging, under a feigned name, at the hotel d'Anjou, rue Serpente, where they remained in a concealed manner, from the time of their entry until the end of the said month, when they left Paris."



Seq. to Mem. P. 17, 22, 26. proof in either process. The pursuers in a manner own, that they never had any authority for it; and that their own witnesses always told them a different story. We must therefore consider it as one of those arts, which did the defender much damage, which disgraced sir John Stewart in the eyes of his friends and of the people, by adding one artifice more to the weight of falshood with which he was charged.

The Condescendance of Facts was delivered to the court of Session on the 29th June 1763; and there, as we have seen, the residence of sir John Stewart, &c. at Godefroi's and Michel's is left wholly indeterminate; and they are represented rather as passing to and from one house to the other, than as actually residing in either of them.

In the course of the winter 1764 the defender had shewn, that the entry of the 12th of July in the general record did not prove the actual residence of sir John Stewart at that time, but only that he had been at the place specified some time between the preceding report and that of the 12th; which no one denied. The pursuers in consequence of this resumed their first plan; and the fact brought to proof in April 1765 is the same, which appeared in the earlier plaintes; that the company came to Godefroi's on the 4th of July 1748; that they removed to Michel's on the 8th; where they remained to the end of the month; and that the entry of Fluralt was written by sir John Stewart.

#### S E C T. V.

*Of the alibi at Michel's, as stated in April 1765.*

AS the book, it was said, could not be obtained, Mr. Duruifseau was the first witness examined on April the 12th 1765. He is called to certify the contents, and to establish the authority of Michel's livre d'inspecteur. He was doubtless by his office and public character the most proper and credible witness, who could possibly be produced. He deposes, that he was commissary of the quarter of St. Andrew in November 1762; that he was directed by an ordonnance of the lieutenant-general of police, “\* de  
P. P. 144. I. “ constater le registre de Monsi. Michel : qu'il en a constaté l'état, &c  
— 145. A. “ l'a ensuite remis entre les mains du Sieur Buhot, qui s'en est  
“ chargé le tout suivant le procès verbal, que le deposant en

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\* “ To look at the state of the register kept by Michel; that he accordingly did so, and  
“ afterwards gave it to Mr. Buhot, who took charge of it; agreeable to a process verbal  
“ which this Deponent made out thereof on the 8th of November 1762.”



“ a dreslé le 8 Novembre 1762.” He says, that this procès verbal is all of his own hand-writing, and he delivers it in as relative to his deposition.

He then proceeds to the contents of the book, and declares,

1st. “ † Que l'article concernant le Sieur Fluratl, Ecoffois, & P.P. 145. B.  
 “ sa famille, entrés le 8 Juillet 1748, ne lui a paru nullement  
 “ suspect, d'autant mieux qu'il y avoit des visa de ce registre,  
 “ avant & après l'article en question.”

2d. “ Depose autant, qu'il peut s'en souvenir, que l'article, qui — 145. F.  
 “ précède celui de Monf. Fluratl, est d'une date antérieure à celle  
 “ du 8 Juillet.”

3d. “ Qu'il se souvient d'avoir demandé à Michel, de quelle — G.  
 “ écriture étoit l'article de Monf. Fluratl ; & que Michel lui a  
 “ répondu, que cet article n'étoit ni de son écriture, ni de celle  
 “ de sa femme ; & qu'il presumoit qu'il étoit de la personne, qui  
 “ avoit dit se nommer Fluratl.”

4th. “ Que le livre des chambres garnies, que Michel apporte au — 1.  
 “ déposant tous les mois, depuis que le déposant a le département  
 “ de ce quartier, est postérieur à l'année 1750, & qu'il n'a jamais  
 “ vu le livre, que le dit Michel avoit à l'usage du commissaire pour  
 “ l'année 1748.”

5th. “ Que l'article concernant le Sieur Fluratl lui a paru d'une — 146. F.  
 “ écriture distincte & différente de tous les articles écrits tant sur  
 “ la même page, que sur celle d'à côté.”

6th. “ Qu'autant qu'il peut s'en souvenir, cet article lui a paru — G.  
 “ écrit d'une écriture assez bien formée ; & qu'il étoit le mieux  
 “ écrit de ceux de la même page & de ceux d'à côté.”

† “ 1st. That the article concerning Mr. Fluratl, a Scotchman, and his family, entered the  
 “ 8th of July 1748, did not appear to him at all suspicious, more especially as he  
 “ had visa's upon this register before and after the article in question.”

“ 2d. That, so far as he can remember, the article preceding this of Mr. Fluratl is of a  
 “ date anterior to that of the 8th of July.”

“ 3d. That he remembers to have asked Michel, whose hand-writing the article of Mr.  
 “ Fluratl was ; and that Michel answered, that it was neither his hand-writing, nor his  
 “ wife's, and that he presumed it was the person's hand-writing who called himself Fluratl.”

“ 4th. That Michel's book which he brings to this deponent every month since he has  
 “ had that quarter, is posterior to the year 1750 ; and that he never saw the book which  
 “ the said Michel kept for the commissary in the year 1748.”

“ 5th. That the article concerning Mr. Fluratl appeared to him of a distinct and diffe-  
 “ rent hand-writing from all the articles on the same and opposite pages.”

“ 6th. And so far as he can remember, that article appeared to him to be written in a  
 “ hand very well formed ; and that it was the best written of any on that or the opposite  
 “ pages.”

Mad. Michel is the next witness on the subject. She was  
 P.P. 111. E. examined April the 15th 1765. She deposes, “ \* Que dans le  
 “ livre de l'inspecteur déposé à Tournelle, il y a un article qui  
 “ porte,—as before ;—que cet article y a été inscrit de la main de  
 “ Marie Maliffet, qui étoit alors servante de l'hotel D'Anjou ;  
 “ que la dit Marie écrivit cet article le même jour que le monsieur  
 — 111. H. “ est entré, & que ce fut en présence d'elle déposante ; & qu'il y  
 “ en a plusieurs autres dans le dit registre, qui sont écrits de cette  
 “ même main ; qu'elle n'a point revû le susdit registre de l'in-  
 — 111. I. “ specteur de police ; & qu'elle l'a remis au Sieur Buhot, in-  
 — 111. K. “ specteur de police ; & qu'elle ne le vit pas, lorsqu'elle déposa  
 “ à la Tournelle. Que cet article de Mons. Fluratl & sa famille  
 “ n'est pas porté sur le livre du commissaire, qu'elle vient de repre-  
 — 115. C. “ senter. Qu'elle n'a plus son registre de dépense de l'année 1748 ;  
 “ mais qu'elle se souvient, qu'elle n'a point été dans le cas d'y in-  
 “ scrire aucun article relatif à ces étrangers, soit parce qu'ils payoi-  
 “ ent comptant ce qu'elle pouvoit leur fournir ; & qu'à l'égard  
 “ du loger de leur appartement, c'étoit le livre de l'inspecteur qui  
 “ servoit de règle pour en fixer l'époque.”

Mr. Michel was examined April the 18th. He deposes the  
 same as his wife has done on the subject of the entry ; but adds,  
 — 122. G. “ † Que quand il fut chez Mons. le commissaire Duruisseau pour  
 “ remettre son registre entre les mains du Mons. Buhot, il a dit,  
 “ que l'article de l'entrée de ces trois étrangers étoit écrit de la  
 “ main de Marie sa servante.”

Mad. Godefroi (first) and her husband (second) were ex-  
 — 98. B. amined on May the third. They both declare, that Mr. Stew-  
 — 94. I. art and two ladies lodged at their house in the summer of July  
 1748. They then exhibit their livre d'inspecteur, wherein is the  
 — 97. E. entry following : “ 7 Juillet 1748, Mr. Stewart gentilhomme  
 — 94. G. “ Ecoffois & madame son épouse ;” which, they observe, is not

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\* “ That in the inspector's book deposited at the Tournelle there is an article which  
 “ bears, as before.—That this article was written in it by Marie Maliffet, who was then ser-  
 “ vant in the hotel D'Anjou ; that the said Marie wrote this article the same day that the  
 “ gentleman entered, and in her presence ; and there are sundry other articles in the said  
 “ register which are written by the same hand ; and she has not seen the said register since ;  
 “ that she gave it to Mr. Buhot, inspector of police ; and that she did not see it when she de-  
 “ posed in the Tournelle.—That this article of Mr Fluratl is not written in her commissary  
 “ book, which she produces. That she has not her book of expences for the year 1748, but  
 “ she remembers, that she had no occasion to write in it any articles relative to these  
 “ strangers, because they paid in ready money for every thing which she had occasion to  
 “ provide them ; and it was the inspector's book, which fixed the time, from which they  
 “ paid the rent of their lodgings.”

† “ That when he was at Mr. commissary Duruisseau's in order to deliver his book to  
 “ Mr. Buhot, he said, that the article of the entry of these three strangers was the hand-  
 “ writing of Marie his servant.”



exact; and as for the time these strangers staid, they answer nothing either determinate or indeterminate, positive or conjectural; P. P. 97. K. but refer to their livre de depense, which was locked up in the — 94. H. Tournelle.—They declare they know nothing of a Mr. La Marre or Mad. Le Brun; and that sir John never consulted with them on the subject of an accoucheur; and this declaration seems to be the principal point, which the pursuers proposed to prove by the present depositions of these people.

The facts ascertained by these witnesses are precisely those, which are stated in the first plainte. The three years labour of Mr. Andrew Stuart seemed rewarded by the explicit confirmation of these important discoveries, which he had sent express into Scotland on November the 20th 1762; and the triumph of the pursuers was compleat. The house of lords had dispensed with them from the burden of procuring the books, which was thought a thing impracticable; but they had supplied this want by the clearest and most honourable method, by the testimony of that very officer of police, who had been charged to examine the state of the book before it was delivered up. It is true, this gentleman had met with some little contradiction from the Michels: the livre du commissaire, which they produced, did begin earlier than the year 1750. Mr. Duruisseau had seen it once a month; but this alone might be imputed to mistake; and Mr. Michel declared he had told him, that the entry of these foreigners was written by the maid Marie; but who would believe this ordinary witness in preference to the magistrate, and his process verbal made up at the very instant, and confirmed as they were by Mr. Andrew Stuart, who knew well the hand-writing of sir John, who had examined the book attentively, and whose veracity was above suspicion? The defender, it should seem, had nothing to fear, but the re-delivery of the book; in which case Mr. Stuart's observation might have been confirmed by the numerous letters of sir John Stewart actually in process; or if need were, by the testimony of some disinterested Scotchman, who knew his hand-writing.

As the proof stood on the 3d of May 1765, it appeared plain, that sir John Stewart and lady Jane came to Michel's on the 8th of July; that they brought the child thither on the second or third day after their entry; all which was easily ranged in such a manner as to coincide with the day on which the Mignons lost their child, Thursday the 11th of July. Such a rare coincidence of two independent events, proved by witnesses who had no connection with each other, could not but strike every rational mind, and assure success to the pursuers.

## S E C T. VI.

*Of the production of Michel's book in July 1765.*

**W**HAT must be our surprize to find, that a cold and chilling frost came in this month of July 1765, from what quarter we cannot tell, to blast these laurels? Either the conquerors were surfeited with their victory, or the French court relaxed its strictness, or the defender's agents were in one point more superior to the pursuers. Which of these was the cause is not said, but some cause or other produced an extraordinary effect; and Mr. Andrew Stuart gave notice to Mr. M'Conochie at Brussels on the 5th of July 1765, that the books might be seen in the hands of Mr. D'Anjou.

P.P. 604. G.

— 218. D.

Though this notice was given only on the 5th of July, yet the pursuers agents foresaw, that it might be necessary much earlier. When the examination of Godefroi ended on May the 3d, much of the credit of that system depended on the coincidence of the enlevement of Mignon's child with the entry at Michel's; and therefore on the 20th of May, several months after the examinations of the Mignons had been finished, Mr. Mortier, director-general of the glass manufactory, was examined to prove, that the celebration of St. Clair's feast had been deferred in 1748 from the 18th to the 22d of July; in order, as it should seem, that they might be afterwards at liberty to insist, that the enlevement happened either on the 11th or 18th of July, as they should find it necessary; because they foresaw, that if the proof of the entry to Michel's on the 8th of July 1748 should be found to be insufficient, and that the real entry at that house was later, the enlevement must of course be delayed till the 18th.

— 607. L.

On the 23d of May Mr. M'Conochie wrote to Mr. Stuart, desiring him to procure the necessary excerpts from Godefroi's book, to which Mr. and Mad. Godefroi had referred in their depositions:

— 608. A.

this request was not complied with. Mr. Stuart alledged, that the defender's agent had already seen all that the pursuers had in their

— 607. B.

power; that the defender had constantly refused to join in a request to the parliament of Paris with the pursuers; and that by

— 607. D.

the whole scope of the answers then given in, and subsequent proceedings, the pursuers were put under the necessity of laying aside all thoughts of applying to the parliament about these books, till such time as the other parts of the proof in France were finished.

The



The pursuers therefore did not apply to the parliament concerning these books, until the depositions at Rheims were taken. As soon as these were finished, they immediately signed a requête to the parliament for obtaining to both parties inspection of the books.

Whether this may be received as a justification, is a matter of opinion, on which every one will judge for himself. It appears pretty clearly, that the examination of Mr. Maillefer, previous to the production of his letters to Mr. Godefroi, was detrimental to the defender. The commissioners were at Brussels on their return to Paris July the 5th, when notice was given, that the books might be seen; which were accordingly inspected by both parties July the 12th 1765, when the proof was almost closed; two years and seven months after the commencement of the process.

The livre d'inspecteur of the hotel D'Anjou was first produced; and Michel and his wife were called to a second examination on July the 23d 1765. Two leaves of copper-plate taken in France are the right of both parties; they are exact representations of the reverse of the fifth, and first page of the sixth, leaf of Michel's book, and may be found at the end of the defender's proof: they should be in the hands of every one, who wishes to form a right judgment of this cause, and are referred to in the margin of the following remarks as plate first and second: the numbers prefixed to the remarks answer to those in the quotation from Mr. Duruifseau's deposition.

1st. It appears from the inspection of the plates, that no visa of the inspector follows the article of Fluratl on the same page; and that the visa which precedes it, is separated by six other articles. Pl. 1st. A. 2d.

2d. The article which immediately precedes that of Fluratl, was once dated the 12th; and stands now corrected to the 10th: both posterior to the date of the article in question, July the 8th. Pl. 2d. A. 7.

3d. It appears altogether incredible, that Michel or his wife should have said, that the article of Fluratl was written by the gentleman himself; because the persons, to whom they spoke, had the book in their power, and could convict them of falsehood, had they said so, whenever it was for their interest. P. P. 122. G.

4th. What Mr. Duruifseau said about the livre de commissaire, cannot be any longer allowed to be a bare mistake, when he stands convicted of perjury in every other particular to which he has deposed.

Pl 1st. A. 2. 7. 5th. The article of Fluratl is written by the same hand, which  
 14. 17. entered several others on the same and opposite pages, which are  
 Pl. 2d. 2. 4. dated in the months of April and May, when sir John was at  
 P. P. 117. E. Aix; and which Mr. Michel and his wife depose (as they had  
 — 123. D. done before) is the hand of their maid Marie.

6th. This article is not better written than the five other articles, which are found in the same hand-writing on this and the opposite page.

When Mr. Duruiffeau was thus put to shame by the bare inspection of the book, and the veracity of Michel and his wife established, the whole edifice of the pursuers proof crumbled to pieces: there was not one single circumstance of positive proof left.

The pursuers memorialist in the long apology for the conduct of their agents, called the Sequel to the Memorial, has never once mentioned the name of Duruiffeau. His deposition is printed in their proof, page 144. Mr. Andrew Stuart had said, the entry of Fluratl was of the hand-writing of sir John Stewart; the memorialist passes over all this as a mistake; and instead of speaking of Mr. Stuart's knowledge in this matter, talks of his full *persuasion*. Whether all this was mistake or something else will appear from the following observations.

## S E C T. VII.

### *Remarks on the evidence arising from Michel's book.*

1st. **H**AD Mr. Duruiffeau incidentally fallen into these falsehoods in the course of a long and tedious deposition; had he been teased by the defender's counsel, in the manner the pursuers have used Mrs. Hewit, Isabel Walker, Mr. Menager, Mad. Garnier, and others the defender's witnesses, by a cross-examination of many hours on trifling circumstances singly calculated to lead the witnesses into contradictions; we should candidly have imputed his falsehoods to mistake. But his deposition is very short; he is introduced for the single purpose of telling these falsehoods, and for nothing else. The pursuers agents had seen the book, as well as he; and they knew long before, how he would answer to every point, on which they examined him; except perhaps to a trifling question or two about the regulations of the police, which had been answered before.

2d. There is no fresh discovery made to the pursuers by the return of the books from the Tournelle: these pages must and did



did appear to the pursuers agents in October, November, and December 1762, the same as they appeared in July 1765. They passed through several strict examinations, before the book was locked up; while it was yet at Michel's "Le Tuteur du duc d'Amilton regarda attentivement l'écriture de ce livre" on the 8th of November 1762; it underwent a second examination before the magistrate of the quarter, in the presence of Mr. Clos and Mr. Buhot, two French agents of the pursuers; from this day to the 18th of December it remained in the hands of the pursuers agents themselves; and they might have seen it every day for near six weeks together. It underwent a third examination at the Tournelle, and the article is returned with the mark of the court, "paraphé au désir de l'information du 18th Dec. 1762."

D.P. 1026. D.  
— 1060. B.

Pl. 2. A 8.

3d. It was given out, that Mr. and Mad. Michel had said, that the entry was of the hand-writing of the gentleman himself; words, which they have both contradicted upon oath, and which they could not possibly say with common security to themselves at the time they parted with their book into the keeping of another person.

P.P. 111. F.  
— 122. G.

4th. Though the book was delivered into the Tournelle on the 18th of December 1762, the same day on which the Michels were examined, care was taken, that Mad. Michel should never see it. Mad. Michel herself complained she was not heard. The court of Tournelle either had no evidence before it relating to the hand-writing, or it was deceived by the false return of Mr. Duruiffeau, or some other perjured witness who had an interest in the fraud.

P.P. 111. I.  
— 120. A.

5th. In all the pursuers papers, in the *memoire à consulter*, in Mr. Duruiffeau's *procès-verbal*, in the *plainte*, and in the *memoire sur la plainte*, the name is written *Fluralt*, which is a forged name: it is really either *Fluratl*, or *Flurutl*. But as *tl* at the end of a word are not articulate either in French or English, this change was necessary to make it believed, that the gentleman wrote his name himself. The true reading appears for the first time in Mr. Duruiffeau's printed deposition.

6th. The time, in which Mr. Mortier's deposition was taken, affords a reasonable ground for suspicion, that the pursuers agents very well remembered in May 1765 the real contents of Michel's book.

7th. The entry of Fluratl does not in any manner resemble the hand-writing of sir John Stewart. It is the hasty scribble of a good French hand, which no Briton could write; and it is notoriously the same as five other articles on the same and opposite pages, wrote when sir John was at Aix and Rheims. The pursuers memorialist tells us, that the barbarous word Fluratl is an imitation of sir John Stewart's manner of writing his own name, which he had probably given in writing to the maid, and which she could not read. It is very probably copied from sir John's own writing; but it appears by inspection, that the maid did not mean to imitate sir John Stewart's hand. She has written her own *F* for his *S*, two *ll*'s for his *tt*'s; *ur* for his *ew*, and *t* for his *r*; and for the *a* she has either made *a* or *u*. Had this writing really been such a perfect resemblance of sir John's manner of signing, as to deceive Mr. Andrew Stuart, he would not have read it Fluralt, but Stewart; instead of which he called it Fluralt, as others would have called it Fluratl; and at the same time declared, on his own knowledge, that it was sir John Stewart's hand-writing: and Mr. Duruisseau comes at the end of two years and an half to swear, that it was better written than any other article in that or the opposite page.

Seq. to Mem.  
p. 75.

In the year 1764 (when some points of law, which had arisen in the cause, were brought before the house of lords) and afterwards in Scotland, it was charged home upon the pursuers, that the article in Michel's book was a *forgery*. The Michels averred, that when they gave their book to Mr. Buhot, the article of Fluratl was written in the hand of their maid Marie. The pursuers declared in the Monitoire, and in all conversations, that it was in the hand-writing of sir John Stewart. As the case then stood, the most probable and candid conclusion was, that the article had been changed; that the girl's writing had been defaced, and another put in its place in imitation of sir John Stewart's writing, which had deceived Mr. Andrew Stuart. But when the whole appears in its true colours, there is nothing wrong in this charge, but the name; it was not forgery, it was perjury; and those who will swear falsely, will forge where they can, and publish Fluralt for Fluratl.

8th. The pursuers seem to have thought the Michels in their power: their books were irregularly kept, and they might possibly be discredited with the officers of police. But they have done their duty, and spoke the truth. Mr. Duruisseau certainly took a bold step in deposing to a false account of the livre de commissaire;



miffaire; when Michel produced the book, the design, for which he had been engaged to give this account, was very obvious. The article relating to Fluratl was omitted, and this omission afforded an additional proof of irregularity in the entry, which the pursuers were desirous to conceal.

9th. If there is any perjury in Duruiffeau's deposition, or any fraud in those who employed him, (as there certainly is) the Godefrois are plainly accomplices.

Let us see, whether what these persons have sworn on May 3d 1765, is answerable to what they have professed to know.

They both begin with pointing to their livre d'inspecteur as a P. P. 97. E. rule for knowing the month; but as the article of Mr. Stewart in — 94. C. this book bore date 7 Juillet, only one day before the date which Mr. Duruiffeau had ascertained to the article in Michel's, they both observe, that this date is not exact; and they remember <sup>a</sup> — 97. E. too, that there were three <sup>b</sup> persons in company, though only two — 96. C. are mentioned; but as to the time, at which these three per- <sup>b</sup> — 98. C. sons arrived, though they had the livre d'inspecteur before — 94. I. them, they are still so distrustful of their memories, that they can speak of it only indeterminately, “\* c'étoit dans l'été de 1748.” They both speak of their household-book for the year 1748, which they say is not in their possession, but is deposited in the Tour- — 98. B. nelle; and observe, that the account of these three strangers is in — 94. I. that book. Mr. Godefroi remembers, that they staid *quelques* — 97. K. *jours* more than they intended, whilst the lodging they had taken — 94. H. elsewhere was cleared of buggs; and what makes him remember — 96. I. this is, that they paid their account at two several times, as would — 96. K. appear by his household-book: but he does not say at what time after their arrival the first account was paid; it may have been paid, for any thing which here appears, on the second as well as on the fourth day after their arrival, and be equally consistent with Mr. Duruiffeau's previous deposition, as with any other. He remembers too, that the articles in this household-book were — 95. L. in the hand-writing of his wife; which was not quite true. Mad. Godefroi, though no household-book was yet in process, — 99. G. is so good as to say, that in their household-books they sometimes open an account with the vague designation of Monsieur—ou Madame—at the top. They have not the least remembrance of the persons of the women; but as *causa scientiæ* of what they now — 98. C. say, or what they had said formerly, and may be desired to say — 95. G.

\* “ It was in the summer 1748.



P. P. 96. D.  
 — 95. F.  
 — 100. E.  
 — 96. A.

hereafter, they remember that the gentleman came back in August by himself, (as would appear by their household-book, though his name is not in the livre d'inspecteur) and dined at the ordinary; and that he wore a red coat, and was recommended by Mr. Maillefer; that the company were lodged backwards, over a place which is now a stable, and had only two rooms for three persons.

From this view of the depositions of these persons on the 3d of May, it seems they had good memories with respect to all the circumstances they have since related about their guests, except that single circumstance of the time they staid in the hotel; (a circumstance which we are required by the pursuers to believe they had been telling to every one who asked them, for more than two years, and which they had deposed before the Tournelle); and yet an account of this had been published in the Monitoire, and from thence they might have now assisted their memories with the utmost precision, had that account been true; but this was the point which contradicted Mr. Duruiffeau, and was therefore to be concealed. Perhaps there may be but a slender ground for accusing Mr. and Mad. Godefroi of direct and positive perjury on account of what they deposed at this time; but if they really believed what they have since sworn, there is great room to condemn them for gross prevarication in concealing their conjecture, and in endeavouring to throw an undue weight of credit on Mr. Duruiffeau's testimony, which in this case they believed to be false, especially as all they say about their household-book before it came into process, is impertinent and out of place, singly calculated to pave the way for its reception with greater credit, if ever the fraud about Michel's book should be detected.

P. P. 1111.1.9.

From what has been said, it appears, and is now admitted, that Michel's book is of no authority whatever; that the one positive proof of the pursuers, which was sent into Scotland in November 1762, on which the process began in the courts of the two kingdoms, is a wilful and absolute falsehood, which slipped through the Tournelle by the suppression of Mad. Michel's testimony, and came before the court of Session supported by the abandoned perjury of Mr. Duruiffeau, the prevarication of the Godefrois, and the insinuation that the entry was made by sir John Stewart.



## S E C T. VII.

*Of Mr. Godefroi's books, letters, and deposition.*

THE pursuers do not blush to rest the whole strength of their cause on the subsequent depositions of Godefroi and his wife, who had so basely truckled to the perjury of Mr. Duruisseau.

On the 30th of July, 1765 Mr. and Maq Godefroi were examined a second time, and confronted with their livre de depense, which had been recovered from the Tournele. This book contains an anonymous article conceived in the terms and words following:

Juillet 1748. Monsieur

Du Jeudy 4. sont entrés à souper

Deux bouteilles de Bourgogne	—	1	10	— 102. E.
5. Trois bouteilles de Bourgogne	—	1	16	
6. Trois bouteilles de vin	—	1	16	
7. Deux bouteilles de vin	—		12	

8. Mr. a payé & recommence le neuf à dîner hors une bouteille de Bourgogne, qui n'a point été comptés le huit à souper

—	—	—	—	1	4
9. Deux bouteilles de Bourgogne	—		12		
10. Trois bouteilles de Bourgogne	—	1	16		
11. Trois bouteilles de Bourgogne	—	1	16		
12. Deux bouteilles de Bourgogne	—		12		
13. Trois bouteilles de Bourgogne	—	1	16		
Pour du beurre tous les jours	—	1			
Un carreau de vitre	—		5		
Cinq jours & demi	—		49	10	
Extraordinaire du vin	—			6	
			58	17	

The same book contains also a second article, in the terms and form following:

Du Jeudi 8 Août 1748. Mr. Stewart est entré à souper.

11. Une demi bouteille de Bourgogne & un } mulseaux	—	—	—	1	6
12. Une bouteille de vin blanc	—	—			8
Quatre jours & demi	—	—		13	10
				15	4

In

P. P. 102. K.  
— 102. L.

In the first of these accounts the date of the month, year, and day, and the word *monieur*, and the first five lines are written by Mad. Godefroi: the articles dated 6. and 7. are written by Mr. Godefroi. The first five lines below the stroke, marked 8. 9. 10. are written by Mad. Godefroi, the five next by Mr. Godefroi, and the two last by his wife.

— 103. G.  
— 102. D.

The second Account on the 8th of August is all written by Mr. Godefroi. Mr. Godefroi says, that the first of these is the article  
“ \* qui concerne Mr. Stewart & deux dames, dont le deposant a  
“ parlé dans sa premiere deposition ;” and “ qu’il se rapelle par-  
“ faitement, que le dit article du 8 Août, portant en tête le nom  
“ de Monf. Stewart, regarde la même personne, qui concerne le  
“ compte du + Juillet précédent, qui est dans la page vis-à-vis.”  
He then presents another livre de depense, concurrent with the former. Th’s book had never been in the Tournelle, and was never heard of till this examination.

— 103. K.

— 109. F.

Mad. Godefroi depose, “ † Que le compte commençant au 4  
“ Juillet 1748 est relatif à Monf. Stewart & aux deux dames,  
“ qui étoient avec lui.”

— 47. D. E.

Mr. Godefroi was examined a third time, as a haver, on the 19th of August 1765; when he presented two letters from Mr. Maillefer Forzy, syndic of the city of Rheims, sealed with the city-seal, and addressed to the deponent. The first letter is addressed, “ A monsieur monsieur Godefroi, agent de la ville de Rheims,” and contains what follows; which must of necessity be quoted, because it has suffered so much misrepresentation.

“ Monsieur,

A Rheims ce 2 Juillet 1748.

— 92. C.

“ ‡ Il est party ce jourd’huy de Rheims un colonel Ecoffois, avec  
“ deux dames, qui doivent arriver Jeudy 4 à Paris par le carosse  
“ de Rheims. Je leur ai indigué votre hotel pour y descendre.  
“ Je ne sçay, si ce sera pour du tems ; car je crois, que leur in-  
“ tention

• “ Which belongs to Mr. Stewart and two ladies, whom he mentioned in his former de-  
“ position. And that he remembers perfectly, that the article of the 8th of August, which  
“ bears the name of Mr. Stewart on the top, concerns the same person, to whom the Account  
“ of the 4th of July preceding belongs, and which is on the opposite page.”

† “ That the account beginning the 4th July 1748, is relative to Mr. Stewart and to two  
“ ladies who were with him.”

“ Rheims, 2 July 1748.

“ † There is set out to-day from Rheims a Scotch colonel with two ladies, who should ar-  
“ rive on Thursday the 4th at Paris by the Rheims coach. I have directed them to your  
“ hotel to alight there. I do not know if it will be for any time; for I believe, that their  
“ intention



“ tention est d’avoir un appartement à eux par la suite. Mais la  
 “ *grace, que je vous demande*, c’est de sçavoir à peu près l’heure,  
 “ qu’arrive le carosse à Paris ; & d’aller au devant d’eux à fin de  
 “ décharger leur malle, & qu’il ne soit point dans le cas d’aller  
 “ à la Douanne ; où ils se trouveroient fort embarrassé. Comme  
 “ il aura quelques emplettes à faire à Paris, je lui ai dit, qu’il  
 “ pouvoit s’adresser à vous, comme étant fort connoisseur, &  
 “ que vous ne souffrirez pas qu’on le trompât. Si vous n’avez  
 “ pas le tems d’aller au devant, engagez quelqu’un, ou madame  
 “ votre épouse, d’y aller. Je leur ai promis, & ils s’y attendent  
 “ absolument. (Signed) MAILLEFER, Sindic.”

The second letter is dated 12 Juillet 1748, of which the pursuers have printed only this short extract : “ \*Donnez moy, je P. P. 92. H.  
 “ vous prie par la premiere occasion des nouvelles de ce mon-  
 “ sieur & dames Ecoissoises, que je vous *ay adressés*.”

## S E C T. IX.

*Remarks on Mr. Godefroi's books and deposition.*

WE have now before us all the written evidence relative to fir John Stewart's residence at Godefroi's. Mr. Maillefer's letters and the livre d'inspecteur entirely agree with the accounts of fir John Stewart and Mrs. Hewit. The livre de depense is anonymous, and tells nothing ; and its importance in the cause depends on the testimony of Mr. and Mad. Godefroi, who have applied this article to fir John Stewart.

The evidence of these persons seems false and inadmissible, for the following reasons :

1st. These persons have meanly submitted to suppress their testimony on the 3d of May, in order to countenance the perjury of Mr. Duruisseau. In any case they would be suspicious witnesses, but more particularly in this. Is there common sense in allowing

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“ intention is to have an apartment to themselves afterwards. But *the favour, which I beg*  
 “ *of you* is, to get notice about what hour the coach arrives at Paris, and to meet them in  
 “ order to discharge their trunk, and that it may not be obliged to go to the custom-house,  
 “ where they would find themselves much embarrassed. As he will have some purchases to  
 “ make at Paris, I have told him, that he might apply to you, as being a connoisseur in  
 “ these things, and that you would not allow him to be imposed on. If you have not time  
 “ yourself to go to meet them, engage some one, or your wife, to go thither. I have pro-  
 “ mised it to them, and they do absolutely expect it.”

\* “ Give me, I beg of you, by the first opportunity, news of the Scotch gentleman and  
 “ ladies whom *I recommended to you*.”

K

them

them now to produce that very circumstance, -which they had before suppressed in favour of a falsehood ?

2dly. These witnesses depose to the application of an article of their books, in which they are scarce liable to contradiction by positive testimony : and they do this without assigning any one proper *causa scientiæ*. Mad. Godefroi has referred to the inspector's book as a cause of recollection. But in this she speaks false ; for the entry of Mr. Stewart and one lady on the 7th of July could never teach her, that a blank account commencing the 4th July applied to Col. Stewart and two ladies. Godefroi's recollection of Mr. Maillefer's letter was called a *causa scientiæ*. But this letter was not heard of till late in the cause ; and it proves at most only that Godefroi recollected, that sir John Stewart had been in his house ; which no body disputes. The question is, How long he was there ?

And of this they are so little able to give any reason of knowledge, that they omit many circumstances, which might have led them to determine it precisely. Was sir John Stewart at Godefroi's, when Mr. Maillefer's second letter arrived on July 13th ? Godefroi's oath implies that he was ; yet he takes care to mention no circumstance, in which an appeal might be made to Mr. Maillefer. And the pursuers had very prudential reasons not to produce the books or letters, till that gentleman had been examined. It appears, that Godefroi received sir John Stewart's letters, which came from Rheims. There is a letter in process from Mr. Andrieux ; directed to sir John at Godefroi's, dated July 18. How did sir John get this letter ? Godefroi cannot say. In short, Mr. Godefroi and his wife decline mentioning any circumstance relative to their guests, which could subject them to contradiction ; or at least, their total silence on all these circumstances shows, they know very little or nothing about their guests ; and that they have received help from abroad in the point, to which they have deposed.

P.P. 92. K.

The pursuers contend, and Godefroi has indeed sworn, that Mr. Godefroi has told the same story from the very first ; which is false. When they applied first to him in October and November 1762, he did not recollect one syllable of the matter. This is proved by the memorials and première plainte. Would the pursuers have expressly said in their memorials, and repeated in their plainte, that they could not discover where sir John lodged ; or alledged at last, that sir John probably came to Godefroi's on the 4th of July, because the people in the stage-coach generally put up there, if they then had the least hint from a positive witness, that sir John had lodged in the house ?

It



It is said, Mr. Godefroi was retained as a witness before the Tournelle on December 18 1762; and therefore he was ready to depose at that time to what he has since sworn; but if he was then retained as a witness, it could have been for no other purpose, than that he might support their presumptive proof by saying, that the people from Rheims generally came to his house: or his name might be put in to swell the list of witnesses without any intention of examining him. And this is the more probable, as he had no day assigned for his appearance; though the Michels were hurried into the court and hurried out again on the same 18th of December; the very day after the plainte had been presented.

On Christmas day 1762 minutes of sir John Stewart's judicial declaration arrived in France. In this declaration sir John had said, that they lodged the first night or two at Godefroi's. In consequence of this an additional plainte was preferred to the Tournelle; and Mr. Godefroi appeared in support of it on January 10 1763. He was a second time summoned before the same court, some time in the spring, to exhibit and deliver up his book. What he deposed at one or other of these examinations may be seen under the hand of Mr. D'Anjou, in a paper written the April following. This piece is called, "Exposé des faits des" "preuves sur la supposition d'Archibald Stewart;" and contains what follows:

" \* Lady Jeanne, son mari, & la demoiselle Hewit resterent D. P. 1029. B.  
 " dans l'hotel de Châlons chez Godefroi, depuis le 4me jus-  
 " qu'au 8me Juillet, sans y avoir vû personne. Et ce jour, 8  
 " Juillet, ils arreterent, & payerent leurs depens. C'est un fait en-  
 " core prouvé par les livres, sur les quels ce depens se voit inscrit;  
 " & par la deposition de Godefroi. Ce même jour, le 8 Juillet, le  
 " sieur Stewart, qui ne pouvoit placer l'accouchement premedité  
 " de lady Jeanne chez le sieur Godefroi à l'hotel de Châlons, par-  
 " ceque Godefroi étoit trop connu à Rheims, où la grossesse avoit  
 " été annoncée, & où la supposition de l'accouchement auroit pu  
 " facilement être découvert, prit la partie de quitter cet hotel: il  
 " y ar-

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\* " Lady Jane, her husband, and Mrs. Hewit remained at Godefroi's in the hotel de Chalons  
 " from the 4th to the 8th of July without seeing any person: and on the 8th they paid their  
 " expence. This fact is proved by the books in which their expence is written, and by the  
 " deposition of Godefroi. The same day, the 8th of July, Mr. Stewart, who could not  
 " place the intended delivery of lady Jane at the hotel de Chalons, because Godefroi was too  
 " well known at Rheims, where the pregnancy had been announced, and where the suppo-  
 " sition of a delivery would have been easily discovered, took the resolution to leave the  
 " hotel;



“ y arrêta & paya sa depense, *comme on vient de le voir*, & alla  
 “ assurer un autre logement rue Serpente.” And then follows the  
 lie about Michel's book, which was never out of mind from the  
 time the book was hid, till the time it was recovered.

This passage has been quoted at length, that we may have  
 no occasion to return to it. There is certainly no presumptive ar-  
 gument in the whole process better founded, than this of Mr.  
 D'Anjou's. The pregnancy, as he says very truly, had been declared  
 at Rheims. Mr. Godefroi was agent for the town, and he was  
 in constant correspondence with the people at Rheims. There  
 was a continual resort of travellers from thence to his house in  
 the public coach. It has always appeared morally impossible, that  
 an imposture could have escaped detection, had lady Jane been at  
 the hotel de Châlons on the day, on which she has dated the birth  
 of her child.

Such is the presumptive reasoning in this passage; but there is  
 also a positive proof, that Godefroi did not always say the same  
 thing. The pursuers produce a book in 1765 to prove, that sir  
 John Stewart was ten days at Godefroi's, which they declare they  
 had produced in 1763 to prove that he left the house at the end of  
 four days: and they desire us to believe Mr. Godefroi in 1765  
 that sir John lived with him constantly till the 14th of July; and  
 own that this same witness had deposed in 1763 that sir John  
 went away on the 8th. What a scene is here? And yet the learned  
 • writer of the pursuers Memorial disgraces his pen, and tells us,  
 Godefroi always said the same thing.

The writer of these papers has had reason to make frequent re-  
 marks on the liberty, which Mr. D'Anjou has taken with the pri-  
 vate conversations of many witnesses: but he cannot easily  
 bring himself to believe, that this gentleman would take the same  
 liberty with a public deposition. There is therefore great reason  
 to think, that Mr. Godefroi's Tournelle depositions are fairly re-  
 presented.

To proceed: On the 3d of May 1765 Mr. Godefroi neither  
 deposed what he had deposed before the Tournelle, nor what he  
 has since thought proper to depose in this process: yet, if this  
 latter story was the truth, his prevarication at that time was wil-  
 ful; because he had the same help to his memory from the date

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“ hotel; and paid their expences, *as has been already seen*, and went to secure another lodg-  
 “ ing for themselves in the street Serpente.”



in the printed copy of the *Monitoire*, as he has since had from his own book.

It is needless to observe, that Mad. Godefroi's conduct throughout is a mere echo of her husband's; and like all other echos not quite so strong: and it is not denied, that when she was examined in the *Tournelle*, she deposed, that she knew nothing of the matter, and did not remember whether sir John Stewart had ever lodged in her house.

Mr. Godefroi and his wife have sworn falsely in another particular, in order to raise the credit of their books. They say expressly, that the book of accounts contains the names of all the persons who came to lodge and eat with them, except such as are known, and commonly come for a single night. At their first examination this was said of one book; at their second examination they produced another book concurrent with the former; and at last several accounts have been found on loose papers, which are in neither book. This demonstrates the falsehood of their oath.

P.P. 99. A.

— 106. A.

App. to Def.  
Mem. p. 69.

And the same appears from a small ray of truth, which slipped from them in their first depositions. Mr. Godefroi has said, that he believed his hotel was full at the time these strangers were in it; because he gave them an apartment on the second story over what the remise now is; and that his house was generally much frequented. Mad. Godefroi speaks still more of the credit of her house. She had then fifteen chambers, and nineteen beds: and she has since augmented her lodging rooms with ten chambers and ten cabinets, and they are all ordinarily full from one end of the year to the other. The expence of the augmentation gives a credit to what they aver.

P. P. 95. H.

— 99. D. K.

But upon the strictest examination of these three books for several years, the pursuers have not been able to show accounts for the people, which their house, which was generally full from one end of the year to the other, would contain; or that there were ever more than eleven persons in it at any one time; and generally only two, three, or four; and particularly from the 4th of July to the 18th 1748 there appears from the books to have been only three persons in the house, besides the persons to whom the contested account belongs, and sir John Sewart and lady Jane. This is a clear demonstration, that the books do not contain the names of half the persons, who came to lodge at the house.

Mem. pt. 3.

p. 130.

Mem. pt. 3d.

p. 125.

## S E C T. X.

*Remarks on the anonymous account in Godefroi's book.*

HAVING thus dismissed Mr. Duruiffeau and Mr. Godefroi and his wife, as witnesses who deserve no credit; there remains nothing in process on the pursuers side to support their alibi proof, but the livre d'inspecteur at Godefroi's, and the parole testimony of Mr. and Mad. Michel; in which we meet with nothing that contradicts the account of sir John Stewart and Mrs. Hewit. But one may certainly go a step further, and shew by many strong circumstances, that the anonymous account beginning on July the 4th cannot possibly relate to sir John Stewart, lady Jane, and Mrs. Hewit.

Mr. Godefroi has deposed, that his house was pretty full at that time, and gives a reason for what he says. It is more probable therefore, that eight persons should appear in the books, than six only.

Mr. Godefroi and his wife totally forget every circumstance relative to these ladies, though they came recommended by a gentleman whom the Godefrois ought to respect. Mad. Godefroi never once went into the ladies room; and mistakes Mrs. Hewit for a femme de chambre. Feuquier, the servant, has not the least remembrance of them. All which is very favourable to sir John's account of a very short residence.

P. P. 98. E.  
— 98. C.  
D. P. 313. E.

Mr. Godefroi and his wife both observe, that the English never stay longer in their house, than till they can procure another lodging. Mr. Maillefer had intimated in his letter, that the Scotch colonel would go very soon to another lodging; which brings this company nearly to the case of those, for whom no account might be opened; as Mr. Godefroi has described it.

P. P. 95. H.  
— 95. E.

Other presumptive arguments arise from the state of this account, or from the general appearance of the books.

The pursuers observe, that this account relates to three persons, who had no servants, who came to this inn on the 4th of July: and therefore if this account does not relate to sir John Stewart, lady Jane, and Mrs. Hewit, they had no account open for them; and another company, consisting of the same number of persons, must have arrived on the same day, who are not in the inspector's book. This seems to be the force of the pursuers presumptive argument.

— 103. D.  
— 109 K.  
— 110. B.

The



The defender is willing to allow these books credit for the purposes for which they are originally designed; but it seems impossible to admit them as competent evidence in a cause of property. The household books contain very many anonymous articles, which are not in the inspector's book: *this* in its turn contains several, which are not in the household books. And, if we believe Mr. Godefroi and his wife in the least exceptionable part of their deposition, the three books taken together do not contain the names of one-half of the people who came to the house. This defect Mad. Godefroi owns was supplied in the shorter accounts by memory: and larger accounts it appears were sometimes minuted down upon loose papers, and never transcribed into the book. A very accurate account of Godefroi's police book, and abstracts of all the entries in the household books from Feb. the 21st 1747 to Jan. the 1st 1750, is published by the defender. The pursuers too have published their excerpts; that is, a copy of the police book, with excerpts from the household books of such articles only, as have the names prefixed, and are not disputed; and such others as they are pleased to apply by conjecture to the articles of the police book. All these are printed in one column, with the running title of *Corresponding accounts in the household books*. From these pamphlets we may judge both of the general state of the books, and of the conduct of the parties.

But, besides the arguments drawn from the general nature of the books, there are some particular circumstances belonging to this anonymous account, which prevent us from applying it in any manner to sir John Stewart, lady Jane, and Mrs. Hewit.

It was usual at Godefroi's to commence an account with the best designation of the persons which was known. The sex of sir John Stewart and his ladies was known; and not a single instance is produced of a company known to consist of both sexes, which appears with the designation of one only. The gentleman was known as a Scotch colonel; and many examples appear of persons, who are designed by their professions, when their names were unknown. Sir John Stewart's name was known on the 7th of July; and many instances occur in the book, where a blank article has been filled up, as soon as the name was discovered. Mad. Godefroi recommences this account on the 9th; and yet the blank is not filled up. There is no tea, nor sugar, charged in this article; yet lady Jane and Mrs. Hewit are every where known by their use of tea: the pursuers do not scruple to use this circumstance as a presumptive argument against them in the case of Sanry's child. No

D. Ap. No 12,

13.

P. P. 92. c.

D. Ap. No. 12.

—No. 14,

letters are charged; and yet sir John's letters were left at Godefroi's. Three bottles of Burgundy per day is more wine, than two women and a man, who was much abroad, could want: beside, sir John Stewart in August indulged his palate with three sorts of wine in two days: and this company never varied their wine in nine days. Many more arguments of this sort would occur to an attentive observer, sufficient to induce them to apply this account to any other, rather than to sir John Stewart: they are wholly out of place here. The writer of these papers had never the vanity to enter the list with sir Adam Ferguson: presumptive argument is his weapon, and he is welcome to use it.

P. P. 96. 1.

There are three arguments however remaining, which are much more than presumptive. Let it be allowed, that Mr. Godefroi had some confused idea of sir John Stewart, or of the persons to whom the account belonged.—In his first deposition he says,  
 “ \* Qu'ils avoient arrêté un logement, qui ne se trouva pas prêt,  
 “ parce qu'on voulut le faire nettoyer à cause de punaises; que  
 “ ce qui rapelle à lui depofant cette circonftance, c'eft, qu'ils  
 “ avoient arrêté & payé leur depenfe dans fon hotel, comptant  
 “ d'en fortir; & que n'ayant pu aller dans leur nouveau logement,  
 “ ils refterent encore quelques jours; ainfi que l'on vera par fon  
 “ livre de depenfe.” We have here an account of sir John and of the bugs, as numerous as in the declaration itfelf: and for farther information we are referred to a book, which could not be then feen: unfortunately for Mr. Godefroi, the book has been fince recovered, and by no means corresponds to what he was pleafed to fay of it. The anonymous company to which he refers never difcharged their account till they left the houfe on the 14th. On the 8th after fupper they called for their bill, to fee how their expences ran: they paid what was brought in charge, and left the wine which they were then drinking to be carried on to a frefh account. They never left the houfe, nor is it poffible to conceive that any the moft inconfiderate perfons would defer the examination of their new lodging to fo unfeafonable an hour; or that the greateft debauchees would recommence their evening's entertainment at their return, which they had quitted with a defign to go to bed. Mad. Godefroi's words are thefe: “ Monsieur a payé, & recommence,

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\* “ That they had hired an apartment, which was not ready, as they wanted to have it  
 “ cleaned on account of bugs: and what makes him, the deponent, remember this is, that  
 “ they paid their account in his hotel in order to have left it; but as they could not get into  
 “ their new apartments, they remained fome days longer in his houfe; as will be feen in his  
 “ houfhould book.”



“ hors une bouteille de Borgogne,—1—4. Did these people ever think of taking leave, or Mad. Godefroi of parting with them, when 24 sous were left in arrear to be carried into a new account ?

2d. Mr. Godefroi is pleased also to say in the same deposition, P. P. 96. B.  
 “ \* Qu'ils occupoient deux chambres chez luy, l'une à deux lits,  
 “ qui est la seconde au dessus de la remise, & une autre à un lit  
 “ vis à vis.” This may be true of the anonymous company in the household book ; but is not true of sir John Stewart. There is a little incident relative to sir John Stewart, which appears with an artless and unsuspected simplicity, and shews that sir John Stewart did not lodge in that part of the house.

Mad. Michel told Mr. Andrew Stuart in November 1762, D. P. 1127. A.  
 “ \* Qu'elle se souvient d'avoir entendu dire à monsieur, que sa tête  
 “ étoit presque cassée du bruit, qu'il avoit entendu pendant quatre  
 “ jours dans un autre hotel, où il avoit demeuré avant de venir à  
 “ l'hotel d'Anjou ; & elle pense, qu'il faisoit mention de l'hotel  
 “ de Châlons.” This was the first notice of the hotel de Châlons, which Mr. Stuart had received in France, and occasioned his immediate visit to Godefroi. Mad. de Michel confirms, what she then said, in her deposition : “ † Qu'elle leur avoit entendu dire, P. P. 114. K.  
 “ qu'ils se trouvoient bien mieux chez elle, qu'à l'hotel de Châlons, parce qu'il n'y avoit pas tant de bruit.” There is no reason to suspect that sir John Stewart told Mad. Michel a lie at this time ; and then the consequences are plain, that sir John Stewart and his company were only four days in this inn, and lodged next the street ; and that all which the Godefrois have said, relates to the company who lodged over the place which is now the coach-house ; and has nothing to do in this cause.

Mr. Godefroi's house is thus very graphically described by the pursuers in their petition of June the 17th 1767. The apartment, which they (i. e. the persons to whom the account is said to belong) occupied on the second floor, was in the back court,

\* “ That they occupied two rooms in his house, one with two beds, in the second story above the remise, and the other with one bed, opposite to it.”

† “ That she remembers to have heard the gentleman say, that his head was almost split with the noise, which he had heard for four days in another hotel, where he had lodged before going to the hotel d'Anjou ; and she thinks, that he mentioned the hotel de Châlons.”

‡ “ That she heard them say, that they were much better in her house than at the hotel de Châlons, because there was not so much noise in it.”

and further removed from the noise of the street than Mr. Godefroi's best apartments, which were on the first floor, and in the fore part of the house, which is situated in the street St. Martin, one of the most noisy streets in Paris.

3d. When Mr. Godefroi was pleased to produce the extract from Mr. Maillefer's second letter, it became certain, that all the imposture must have been instantly discovered, if lady Jane had been at Godefroi's on the 10th of July 1748. Can it be thought, that Mr. Godefroi would neglect to acquaint sir John Stewart with Mr. Maillefer's kind enquiries? Is it credible, that the agent of Rheims would neglect to return an answer to the letter of the chief magistrate, on whom he depended? Yet nothing can be more certain, than that, if Mr. Godefroi had written to Mr. Maillefer the same which he now deposes, that lady Jane was at his house in good health on the 14th of July, Mrs. Hewit's letter to the maids, in which the 10th is mentioned as the day of the delivery, would have been instantly contradicted at Rheims; and the whole imposture detected as soon as it was formed: we must be allowed, therefore, to believe, that Mr. Godefroi did not write to Mr. Maillefer what he has since sworn, and that what he wrote was consistent with Mrs. Hewit's account, till the pursuers produce his letter.

In short, Mr. Godefroi had been no witness in process, if sir John Stewart had not informed the court, that he had lodged at the hotel de Chalons. The alibi at Godefroi's came in with the general record of police, and ought to have gone out with it. The depositions of Mr. Duruisseau and Mr. Godefroi are both of equal value, with those who know them. While the books were secreted, the testimony of Mr. Duruisseau bore a greater price than Mr. Godefroi's, by as much as the magistrate and his process verbal are of more popular credit than a simple inn-keeper.

#### S E C T. XI.

*Of the account of Godefroi by Mess. Almon and Anderson.*

AS this is the point of the most importance to the pursuers, that nothing may be omitted, which any person has thought to be of weight, it will be proper to turn to the publications of Almon and Anderson, before the conclusion is drawn.

1st. The first thing here to be observed is at page 112 (a) of Almon's book; that the cry about the plaintiffs changing their ground is nothing to the purpose, or as it is expressed by Mr.

(a) Lord President.

Anderson



Anderson page 42, it cannot influence the determination. Had Mr. Godefroi been unknown, when Mr. Duruiffeau was examined, it will readily be admitted that the change had been lawful. But the pursuers contend, that he was known from the very first, and had always told the same thing: yet, in despite of every thing he was telling them for two years and an half together, the pursuers go on to support the alibi at Michel's by direct perjury, through the whole time that the books were concealed. This gentleman is made to insinuate, that the alibi at Michel's was a mistake: he forgets that the book was seen and examined many times by the pursuers agents, by the magistrate Duruiffeau, by the tuteur du duc d'Hamilton, before it was locked up; and they all knew, and remembered the contents in April 1765. They knew, that the books could not be concealed much longer; and then hurried Mr. Mortier before the commissioners to change the date of the enlèvement of Mignon's child, and examined Godefroi on many points, calculated indeed to raise the credit of his books, but wholly impertinent and out of place, if the books were never to be brought into process.

Mr. Anderson goes on to insinuate, that the pursuers were misled by the false lights hung out on the part of the defender: but it is certain, that no lights hung out by the defender could ever make Michel's book appear other than it was; and it is certain, that the pursuers had taken the ground, on which they stood in December 1762, and in April 1765, before the defender's agents went to France.

It is to be expected, that all the persons, who are said to have spoken against Mr. Douglas, should rely on Godefroi's books; and they do so. It might be expected too, that they would make some apology for Mr. Duruiffeau; which they do not. The pursuers learned memorialist, and all these persons, are absolutely silent on that point. One gentleman indeed is made to say, that there is no competitor against Godefroi: Almon, page 350. (a). It is a pity he has not told us how that happened. For two years and an half Mr. Godefroi was no competitor against Mr. Duruiffeau; now it seems Mr. Duruiffeau is no competitor against him. The truth is, they played into each other's hands, till the fraud was detected; and they now remain accomplices in the same fraud. But we meet with not a word of this: Mr. Duruiffeau and the 3d May are forgotten; and it is really pleasant to observe, how a few good words very calmly bestowed upon Godefroi and his books grow, as they pass through many hands.

(a) Lord Justice Clerk.

At first, the books remain liable to no *solid objection*, and deserving the greatest credit. Next, they are good evidence. Thirdly, all the objections, like fire to gold, have brought them out more clear. And lastly, they are unexceptionable and conclusive.—And pretty much the same expressions of approbation are found in Mr. Anderson's edition.

As for the credit and conclusiveness of the article in Godefroi's household-book, it amounts to this; that somebody once owed him something; for it is both anonymous and imperfect: and it is just as likely, he should remember the sum which was spent, as the person who spent it.

These books may have sufficient credit for the purpose for which they are designed: if the officers of police are content with them, nobody else need dispute their credit in that matter. One would imagine these gentlemen had mistaken the defender's point, and thought he had charged Mr. Godefroi with falsifying his accounts to cheat his guests, that they thus ingeniously assert the honour of the books; but the defender has no such intention; he allows the accounts to be sufficiently fair between the debtor and creditor; but he contends, that the books produced do not contain all the accounts; both because some accounts have been actually found on loose papers, and because Mr. Godefroi could not have maintained his family, much less have enlarged his apartments, upon the slender profit which appears in the books; and also, because both he and his wife have sworn, that their house was generally full. The defender has also shown, that the anonymous account in the book is not applicable to sir John Stewart and lady Jane, for this reason, among many others; because, if lady Jane had been in good health at the hotel de Chalons, when Mr. Godefroi received Mr. Maillefer's second letter, the falsehood of the delivery would soon have been publicly known at Rheims.

Mr. Godefroi's merit mounts by the same steps with that of the books; but as every thing of this kind is panegyric, and not testimony, it is impossible seriously to reply to it. The writer of these papers was led to expect from the known characters of the gentlemen, whose names are set to these speeches, a clear and distinct account of their motives for resting upon Godefroi and his books. The slight manner, in which they hurry over this fundamental point of the process, may perhaps be thought by some a presumptive proof, that it will not bear an examination.

Mr. Godefroi has been mentioned on several other occasions, in order to ground a reflection or two on sir John Stewart.



1st, We read, page 87 (a) of Almon's book, Why give Mr. Maillefer a false pretence for their going to Paris? which is clear from Mr. Maillefer's letter to Mr. Godefroi, wherein Mr. Maillefer recommends them to Godefroi, as Scotch people of quality going to Paris to buy things: and therein begs the favour of him to take care they are not imposed on. This is echoed twice in the subsequent part of the book; page (b) 224 we read of a false pretence to make purchases; and page 341 (c) of a false design in going to Paris. All this seems to be borrowed from the tenth page of the pursuers table of contents; and is carefully preserved, with very little variation, in the correct edition of Mr. Anderson, pages 14, 146, 241, 472.

There needs no other answer to it, than a bare production of Mr. Maillefer's letter, which has already been transcribed. It there appears, that sir John did never acquaint Mr. Maillefer with any design in going to Paris; that Mr. Maillefer does not recommend them as people of quality, but the gentleman as a Scotch colonel.—Sir John did never tell Mr. Maillefer he was going to buy things, or ask his assistance; but Mr. Maillefer perhaps offered it.

The favour which sir John asked of Mr. Maillefer, and which Mr. Maillefer makes the business of his letter, can never be mistaken; for it is introduced with these words, *La grace que je vous demande*. The letter is a civil direction from the principal magistrate of Rheims to his agent, signed by his title of office, and sealed with the city seal, instructing him to meet this Scotch colonel and two ladies at the barrier gate of Paris, and to take care that their clothes were not carried to the custom-house. As to the accidental mention of purchases at the close of the letter, it does not appear, that sir John Stewart knew any thing of it. Godefroi said nothing to him, nor he to Godefroi, on that subject; but he employed another person. The whole application to Mr. Maillefer (with whom sir John was at that time so little acquainted that Mr. Maillefer did not know his name) arose from an accident, which had happened at Sedan. Some clothes had been stopt there, which sir John did not recover, till his return to Rheims.

2d, We are asked at page (d) 475 of Anderson's book, how could lady Jane's situation at the point of delivery escape Mad.

(a) Lord President.  
(d) Lord Justice Clerk.

(b) Lord Stonefield.

(c) Lord Justice Clerk.

Godefroi's

Godefroi's observation for so many days? These many days are the days in dispute: it is easy to answer this question by another, and ask, Where is the proof that Mad. Godefroi ever saw lady Jane during the whole time she staid in the house?

Decl. 3. D.

3d, In Almon, page (a) 103, sir John Stewart is reported to have said, that Mad. le Brun was recommended to him by Mr. Godefroi. This is another mistaken quotation; for sir John never said any such thing. Sir John's words are, "So far as he can recollect, it was Godefroi's *people* who had recommended him to Mad. le Brun."—Had sir John quoted Godefroi, his authority is at least as good as that of the other; but the word which he uses is strictly applicable to the servants, and not to the master; and the phrase is so indeterminate, as sufficiently to secure sir John from the charge of perjury. In page 31 of Mr. Anderson's correct edition, the assertion is softened; and we read only, "that sir John hints, as if he had been recommended by Godefroi;" which happens unluckily to be as great a mistake as the foregoing.

A later speaker in Mr. Anderson's edition, (b) page 241, has indeed hit upon sir John's true expression; but he introduces it very oddly. He says, "they certainly would have applied to some of Godefroi's people for aid in finding out proper lodgings: but their leaving Godefroi's without making such enquiries, and without any of the people in the house observing lady Jane's pregnancy, is a circumstance strange and unaccountable."—Nothing is strange and unaccountable in this process. Sir John says he did enquire of Godefroi's people—Mr. Anderson says he did not.—Not one of Godefroi's people have been examined in this process, nor any of them found, except one servant, who remembers nothing. Who is then to determine this dispute, unless common sense or common candour are allowed to determine it?

The last passage to be observed occurs in Almon's book page 110 (c) in the form of a question: "Will they only give a reason why they did not go to Mr. Godefroi's upon their return to Paris in 1749?" This question is hardened into a positive assertion at page (d) 344, where we are told, that Mr. Godefroi's is a respectable house, and of all other lodgings the most adapted to the purpose of lady Jane's delivery; or, as the passage is corrected by Mr. Anderson, page 474, one of the best in Paris for one in her situation. One little expected to be told, that a public inn

(a) Lord President.  
(d) Lord Justice Clerk.

(b) Lord Stonefield.

(c) Lord President.

was



was the fittest lodging for a lying-in woman ; or that a lady of fashion might not lodge where she pleased without leave of the court.

One answer will serve to both these passages ; which is not a conjecture, for it appears in the proof : Godefroi's house was very noisy, and neither he nor his wife, as they have themselves confessed, treated lady Jane with common civility. The defender has good reason to ask a question in his turn, and desire his antagonists to tell him, By what distraction of mind sir John Stewart was led to trust himself at Godefroi's in August 1748, had he been conscious that he committed a capital crime, when he resided at that very house in the preceding month ?

*Conclusion to the pursuers second assertion.*

Upon the whole it appears, that the pursuers have failed in their alibi proof. The alibi at Michel's has been abandoned ; Godefroi's testimony has been redargued by many strong presumptive proofs, which shew, that the anonymous account is inapplicable to the Scotch colonel and two ladies ; the testimony of Mrs. Hewit receives a great support from the circumstance which sir John told Mad. Michel about the noise at Godefroi's, and his lodging there four days ; and Mr. Maillefer's second letter demonstrates beyond the possibility of a doubt, that whatever fraud there was, must have been immediately detected, had lady Jane been at Godefroi's on or after the 10th of July.—But this is not all, which appears. It is certain, that the books were concealed, before the process began in November 1762, and shamefully withheld from the defender's counsel for more than two years and an half ; that during this time a design was uniformly carried on to support the alibi at Michel's by direct perjury. It was declared, that the article in Michel's book had been attentively considered, and found to be of the hand-writing of sir John Stewart. The court of Tournelle were deceived by the suppression of Mad. Michel's information about her book ; and by the perjury of Godefroi ; and in consequence of these and other delusions, an order was obtained from the procureur-general for the publication of a monitoire, unprecedented, illegal, and false in every particular ; and greatly detrimental to Mr. Douglas. In the end, Mr. Duruisseau was produced for the single purpose of telling falsehoods ; and Mr. and Mad. Godefroi were to assist and countenance him. Lastly, it appears, that when all this was detected, the pursuers have raised up a new alibi, supported only by these perjured witnesses, in direct contradiction to what they had sworn before.

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Mem. pt. 3.  
p. 133.

The pursuers ask, What earthly inducement could Mr. and Mad. Godefroi have to give false testimony? And add,—to suppose they acted thus, they must be presumed of the most abandoned characters, and guilty of the grossest perjury: it must also be supposed, that there must be some person equally abandoned who dealt with these witnesses; and to this must be joined an incorrigible degree of folly on the part of the Godefrois, and of those who could think of prevailing with them.

This high language comes with an awkward grace from one, who has never ventured to mention Mr. Duruiffeau, and who prosecutes lady Jane Douglas. Candour indeed would wish to distinguish Godefroi from the Sanrys, Mignons, and the Duruiffeaus; philosophy and critique may furnish the distinction: but the positive proof, as it now stands, includes all perjured witnesses under the same degree of infamy and disgrace. The pursuers may perhaps have something more than hypothesis, on which to found their opinion. If a motive must be assigned for the Godefrois conduct, the motive which influenced Duruiffeau, let it be what it will, must be abundantly sufficient. Mr. Duruiffeau is a gentleman by his rank and office, much superior to the Godefrois. In the Sanry-story the three premiere witnesses, Mr. and Mad. Sanry and Le Gris, are perjured: in the Mignon-story, at least as many. In this case Mr. Duruiffeau has told nothing but falsehoods: and the Godefrois prevaricate and swear to contradictions and impossibilities; so that without counting the person who wrote Fluratl for Fluratl, or the other who prevailed with the Tournelle to believe, that the entry of Fluratl was of the hand-writing of sir John Stewart, there are at least nine persons, the entire support of the pursuers positive proof, who stand notoriously convicted of false dealing. If a man goes to a gaming-table, and after changing the dice three times finds, that he can still throw nothing but deuce-ace, he must be void of reflection, if he does not begin to suspect, that all the dice in that house are loaded.



### THIRD ASSERTION OF THE PURSUERS,

That there were no such persons as Le Brun and La Marre at Paris in 1748. This assertion is thus expressed in the Condescendance of Facts; “ That in the year 1748 there did not exist  
 “ in the Fauxbourg St. Germain any person of the name of Mad.  
 “ Le Brun, who kept either hotel, lodging-house, or chambers  
 “ to lett: that in the year 1748 there did not exist in Paris  
 “ any physician, surgeon, or man-midwife, either maître en  
 “ chirurgie ou privilégié, of the name of Pierre la Marre.”

No. 25.

No. 26.

### S E C T. I.

#### *Remarks on the enquiry for Le Brun and La Marre.*

THE writer of these papers has endeavoured throughout to confine himself as much as possible to the examination of facts; and the investigation of such obvious consequences from these facts, on which plain sense may sit as judge. In this place, however, he cannot abstain from enquiring, on what general principle of equity or utility this subject of Mad. Le Brun and Mr. La Marre is allowed to take up so long a part of the proof. He can see the interest, which the pursuers may have in this research, were their negative assertion capable of a satisfactory proof: and on the other hand, he cannot but know the advantage, which would accrue to the defender, could he find Mad. Le Brun or Mr. La Marre, and bring them to bear testimony to his birth. But since it has been agreed by all parties, that neither Mr. La Marre nor Mad. Le Brun can be produced, to what purpose is all this waste of time and money to discover, that there were persons, who at last may or may not be the accoucheur and landlady of lady Jane? The pursuers and the court know very well, that the defender would produce these people, if he could: and his simple failing in this point might be charged with all the unfavourable consequences, which can possibly follow from this large code of uninteresting depositions.

The pursuers indeed may say, that this transaction passed in a foreign country, the police of which is little known in Britain, and that they entered on this subject in order to instruct the court in the nature of the government of Paris, and the various means it affords to facilitate the discovery of a person, who may

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at any time have lived there. This perhaps might be of use to us little folks; but it is but an aukward compliment to the respectable members of the Court of Session, whose great eminence in their profession forbids us to think, that they have overlooked so important a branch of useful knowledge, as the administration of civil policy in the great kingdom of France: besides, what little was wanted on this head, might as well have been made known by certificates from the magistrates of police, as by ten thousand witnesses. But what can be said for the defender? Did he engage in this minute detail by choice, or by necessity? If by choice, by what principle of utility was he induced? If by necessity, by what principle of equity was he obliged to it? The writer of these papers owns, he has very great doubts about the proper answers to these questions: and the better to explain himself, he begs leave to propose a familiar instance. Put the case, that there was a dispute in chancery about the legality of a will: it was alledged, that one of the subscribing witnesses, John Smith, for instance, (or any other common name) was an imaginary person, who had really never existed: it was answered on the part of the heir, the defendant, that this John Smith was a soldier in a regiment quartered in the town where the testator lived, when he signed his will; and upon searching the returns of the regiment there were found not only one John Smith, but nine, all of them within the possibility of being the subscribing witness, and all of them deceased. Would not such a general answer sufficiently establish the credit of the will? Would the heir be desirous to ascertain by circumstantial evidence the very person who had witnessed the will, when any one of the nine would sufficiently serve his purpose? To be sure he would not. Would any court of equity require him to investigate such a point? or oblige him to condescend on one particular John Smith, upon pain of losing his estate? To be sure it never would. It must be the business of the plaintiff to prove severally, that not one of these John Smiths could be the subscribing witness; and not of the defender to engage in an enquiry, which might render his cause worse, but could never make it better.

Let us mark what might happen, if he once undertook to specify the particular person. He puts himself to a great deal of expence and trouble to investigate the various characters, connections, and countries of these several persons, who bore one common name and designation; and after a long and diligent enquiry, he finds one of these John Smiths was nearly connected with the family



mily of the deceased; he was even son to the principal servant and confidant of the testator, was often in his family, and very near his person: the presumptive proof looks fair and promising, and if nothing is discovered about the other eight persons of the same name, there would remain scarce a shadow of a doubt, but that this man was the very John Smith who had subscribed the will. The defender rests upon it, and affirms he is: but how easily a single circumstance may overturn the best founded presumption! At the end of two years and an half it is discovered, that this John Smith could not write: the defender is cast.

The writer of these papers cannot help thinking, that this case is pretty similar to that of Mr. Douglas.—On the service Mr. William Loch produced a note, in which is written, that Mr. Douglas was born in the presence of Mr. Pierre La Marre, man-midwife, and Mad. Le Brun and her daughter. And this Mr. Loch says is conformable to the account he received from lady Jane herself.—Mrs. Hewit too remembered the name of La Marre, or something like it.

Serv. 45. E.

— 25. C.

— 12. C.

By this evidence Mr. Douglas seems precluded from assigning any other house than Mad. Le Brun's as the place of his birth, and from giving any other accoucheur to lady Jane than Pierre La Marre. If these persons can be produced, he has so many more witnesses to his birth; if they are dead or missing, he cannot help it. The testimony of the living witnesses must stand or fall by its own merit; it receives neither detriment nor support from this event, which was out of the reach of human power.

But this was not all which might have been urged for Mr. Douglas, when the cause commenced. Mr. La Marre and Mad. Le Brun were known by surer marks, than the vague designation mentioned in the imaginary case above stated. There was a Mr. de La Marre, who practised midwifery at Paris in the year 1748; who delivered a foreign lady of twins; and who was immediately connected with a Mad. Le Brun, who had a daughter. The pursuers knew this before the process began; for Mr. Menager has sworn in the presence of Mr. Andrew Stuart, that he told that gentleman in 1762 what he has since deposed. The pursuers believed this before the process began; for in their Condescendance of Facts they have thought it worth their while to disguise the name, and call this person *La Mart*; just as they had printed Fluralt for Fluratl. It is impossible not to see the motive, on which this name was disguised; for at the same time that the pursuers reported the name to be La Mart in Scotland, they published it de

D. P. 68. E.

No. 27.

D.P. 1011. E. La Marre at Paris in the Monitoire. By what accident this forged name of La Mart slipped twice into Almon's book, page (a) 353, it is more difficult to conjecture; but this is happily corrected by the uncommon diligence of Mr. Anderson.

Such was the real state of the case at the end of November 1762, as the pursuers very well knew, though the defender did not. There was such a rare coincidence between Mr. Loch's note and Mr. Menager's information, as could never be ascribed to mere accident. A practising man-midwife was found of the same christian and surnames, which were produced in the service: a Mad. Le Brun was found, who had a daughter; and the intimacy between these persons and Mr. La Marre is described by Mr. Menager to have been precisely of that kind, as all the world would have expected from the parts they are said on the service to have acted at the delivery of lady Jane. Had the process in Scotland proceeded strictly according to the forms of established justice; had the pursuers given in their Condescendance of Facts, before any witnesses had been examined; they would have stated their objection about Mr. La Marre and Mad. Le Brun to the Court of Session, as they did in their premiere plainte to the parliament of Paris on December the 17th 1762; they would have said there was no Mad. Le Brun, who was an aubergiste, no act of ondoyement performed by Pierre La Marre registered in any of the parishes of the Fauxbourg St. Germain.

The pursuers could not be ignorant, that such objections as these were trifling and insignificant; that there was but one way to raise a fresh recruit of difficulties: if they could but engage the defender to enter on a more special description of Pierre La Marre, it was morally certain, that it would be different in many points, from what the French witnesses had told them.

Appel. Cafe, Apr. 10, 1764. Accordingly on the 9th of December 1762, two days after they had executed their summonses, they petitioned the Court of Session for an immediate proof to lye in retentis. This proof was refused. Unhappily for the defender, sir John Stewart took a resolution about this time to go to Paris, where his presence seemed to be most wanted. This was soon known to the pursuers. On the 14th of December one of their number made oath, that sir John Stewart was about to leave Scotland some day that week. This circumstance gave them a customary claim to indulgence, and sir John Stewart was brought to his examination in all haste that very day.

(a) Lord Justice Clerk.

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The event succeeded to the wishes of the pursuers, and to the expectation of all the world. Sir John was engaged in a particular description of Mr. La Marre, his circumstances in life, and his connections in the world. And he has given an account different in several points from what the French witnesses have deposed, who had better memories, and surer means of information.

It was necessary to prefix this short narrative, that we might know by what accident we have been led into this tedious examination; that we might not think it of more importance in the cause than it really is; and that we might not lose sight of the original state of the question, amidst the heat and hurry of the dispute. It may be matter of curiosity to examine from what quarter all this dispute has been raised; but it is justice to remember, that the following positions are, and must be at all times, invariably true.

1st. Mr. Douglas is not obliged to find Mr. La Marre or Mad. Le Brun; because he is not obliged to impossibilities.

2dly. He may lawfully produce as many witnesses as he pleases, to declare what they know relative to persons of the names of Pierre La Marre and Le Brun. If by chance any thing should appear in the characters of these persons to corroborate the truth of his birth, yet the merits of the cause are not affected by the different informations, which may be thus obtained: but he may fairly and honestly exhibit severally the accounts of all the persons who bear those names, whose history may have come to his knowledge.

3dly. Among these various accounts he is not obliged to have any choice, or to condescend specially upon the particular persons, whom he believes to be the real accoucheur and landlady of his mother. He must leave the court to make what use it pleases of this instruction. The great points in debate, the pregnancy, the delivery, and the convalescence of lady Jane, ought to be determined by direct and positive testimony. Whether this Pierre La Marre and that Mad. Le Brun are the accoucheur and landlady of lady Jane, are points which will admit only a precarious and presumptive testimony. To set this up in contradiction to positive evidence, is, to subvert every rule, which was ever adopted in any court for the administration of justice.

4thly. The pursuers have a full and undisputed right to explain all those various means, which are in use for the discovery of persons, who have at any time lived in Paris; and to encrease the weight

weight of that unfavourable consequence, which may be drawn from the ill success of Mr. Douglas in his enquiry after these persons.

With a due attention to these inviolable principles, we may safely enter on the examination of this embarrassed subject. The pursuers say, there are no such persons as Mad. Le Brun and Pierre La Marre; and that Sholto was not in the family till November 1749. The defender has presented certain persons, who, he says, may severally have been the landlady and man-midwife of lady Jane, and the nurse of Sholto during the first sixteen months of his life. There are therefore three particulars to be examined.

- I. The search for Mad. Le Brun.
- II. The dispute about Pierre La Marre, accoucheur.
- III. The pretensions of Mad. Garnier to have been Sholto's nurse.

Each of these points will be considered separately; and then a short view will be taken of the whole.

## S E C T. II.

### *Of Mad. Le Brun, and the Livres de Police.*

P.P. 178.

THE first means, which the pursuers have pointed out for the discovery of Mad. Le Brun, is the office of police. All persons keeping hotels, or chambres garnies, were registrate in 1748 every fourth month in this office. Mr. Framboisier exhibits the rolls for the months of May, June, July, and August 1748; in which the name of Le Brun does not appear: from whence the pursuers conclude, there was then at Paris no person of that name, with whom lady Jane could possibly lodge. This conclusion is certainly too hasty. The general principle of sage policy, upon which these regulations are founded, seems (besides having in view the profit arising from a tax) to be directed to prevent strangers from lodging at Paris without the knowledge of the magistrate. A very salutary restraint in such a government as France; but humanity forbid, that this restraint should extend to sick persons, whose necessities are often pressing, and demand relief; nor could the government be jealous of those, who were in no condition to disturb it. Any person of any condition may lawfully receive sick persons into his house for favour, or profit, without being under any obligation to open a register, and subject himself



himself to the inspecteur's visits. And the defender has clearly proved by six witnesses of credit, that under the security of this humane exemption many persons do actually keep lodgings for the single purpose of receiving sick persons and lying-in women; and that these lodgings are generally under the care and inspection of some surgeon or man-midwife. And as sir John seems to have trusted much to Mr. La Marre, who, according to Mr. Menager just quoted, had several of these depôts under his inspection, it should seem natural to suppose, that lady Jane was brought to-bed in one of them. The pursuers make an objection or two to this. 1st. That sir John and Mrs. Hewit describe Le Brun's to be such lodgings as Michel's. This is a strange objection. Michel's and Le Brun's were both houses, had doors, windows, and chimnies: and it is of these sir John and Mrs. Hewit are speaking. It is not probable, that either of them ever heard of the laws of police in their lives. They speak of Godefroi's and Michel's as the same kind of houses; and yet certainly there was a more sensible difference between an inn and an hotel garnie, than between the latter and a *maison particuliere*, which differed in nothing, but that one was licenced, and the other was not.

2dly. It has been said, and repeated in Almon's book, that these houses of the *gardes malades* were mean and uncreditable, and unfit for lady Jane; that they were used by none but servants, who could not be nursed in their master's houses, and other persons who were ashamed of their disorder and desired to conceal it. This argument proves too much: it would prove, that lady Jane never travelled in a stage-coach, never suppressed her rank, never went by sea from London to Scotland. Besides, it is no discredit to the general conduct of the ladies in so populous a city as Paris, to suppose there may be a few in their number, who find it expedient to lye in privately, and can afford to be well lodged. It should be remembered, that in the situation lady Jane then was, she might have been received into the house of any private person of any rank, without fear of the police; and, in fact, there is no evidence, that these lodgings were mean, except sir John Stewart's and Mrs. Hewit's. Mrs. Hewit describes them as not quite so good as Michel's. They were full of buggs; and lady Jane left them hastily in disgust. One circumstance in Mrs. Hewit's deposition, for which she has been abused, points very strongly at the house of a person used to receive the sick, and is very consistent with what she wrote to Isabel Walker. She says, lady Jane had no other attendants but

D. P. 67. E.  
 — 104. E.  
 — 165. E.  
 — 166. C.  
 — 167. C.  
 — 286. D.

Mem. pt. 3.  
 P. 27.

P. P. 252. H.

Mem. pt. 3;  
 P. 29.

P. P. 253. G.

— 254. G.  
 the

Min. 8. c.

the deponent and the people of the house; and yet she wrote to Isabel Walker, that lady Jane had a sick nurse. These expressions taken together make a very tolerable Scotch description of a French garde malade. Mr. Anderson has sometimes taken the liberty to amuse his readers under a respectable name. He says at page (a) 121, "Abstracting from the evidence of sir John and Mrs. Hewit, any evidence we have of a Mad. Le Brun tends to make her a sick nurse, that is a garde malade." Were it the business of these papers to parody the expressions of this publisher, one might venture to assert, that combining the evidence of sir John and Mrs. Hewit and Isabel Walker with the French depositions, all the evidence we have of a Mad. Le Brun tends to make her a garde malade; and Mrs. Hewit's description of a sort of employment, to which she could not possibly give a name, serves to show both her attention to lady Jane, and her earnest desire to speak the whole truth in this process.

Mem. pt. 3.  
P 32.

The pursuers memorialist seems to think, that if Le Brun's had been a maison particuliere, sir John and Mrs. Hewit could not have been admitted. But sickness of all kinds requires attendance: and one can hardly think, that the law which permitted a private person to receive a lying-in-woman, would exclude her husband, or her necessary companion. Besides, it is admitted by the pursuers, and the whole speakers in Almon's book, that sir John and lady Jane lodged for several days in some house, after they had left Godefroi's, and before they went to Michel's; and that this lodging-house was neither hotel-garnie or inn, consequently must have been a maison particuliere.

It is not easy to guess, why the words garde malade are translated a *sick nurse*: the garde malade is the woman, who lets the lodgings; her servants, or the people she employs, are sick nurses. The writer of these papers has a notion to have heard of school-masters, and magistrates of small-towns, who have kept the owner of some house in the out-skirts of the town constantly retained for the purpose of receiving those, who have the small-pox, or other pestilential disorders: he thinks the little town of Alresford in Hampshire had such a house in 1749. A person thus employed answers more properly to the French notion of a garde malade, than any other in England.

(a) Lord Barjarg.



## S E C T. III.

*Of Mad. Le Brun, and the Capitation Rolls.*

THE next method recommended by the pursuers, is a search in the capitation rolls. From the evidence adduced on this head it appears; that the general rolls of capitation are made up D.P. 209. E. once at the end of every year:

that all the houses in Paris are included in these rolls: — 210. E.

that these rolls are made up, and kept at the town-house; except those of the members of particular corporations or fraternities in Paris, who are first taxed as *societies*, and then their own officers assign to every member his proportion of the burthen, and return their list, not to the town-house, but to the office of police: — 209. C. — 213. B.

that the tax collected by the incorporation is merely personal; and that, if the member has servants, he pays a separate tax for the servants to the *town-house*, where his name will be found: — 255. D.

that, if a member of incorporation or his wife exercises any other trade, or engages in any other employment, as keeping an hotel ou chambres garnies, he or his wife will be liable to a double tax, one to be paid to the fraternity and transmitted to the office of police, and another to the town-house: so that the family name will be found in both lists: — 255. F.

that every head or master of a family, and every principal tenant, is inrolled by name: — 209. F.

that wives, children, and servants, are included in the tax paid by the head of the family, and are not inrolled by their name, but designed by their number only. — 209. G.

These lists, it must be owned, are very general, and include without all doubt a very great majority of the house-keepers in Paris: yet they are not to be understood without considerable exceptions, particularly of persons in that rank of life, to which Mad. Le Brun must be supposed to belong. These exceptions are mentioned by the same witnesses, who are all gentlemen of credit.

1. All Swiss and Genevois were exempted in 1748, with their wives, and widows. — 255. B.

2. All embassadors, envoys, and other ministers, as well foreign as French, with their servants, wives, &c. are exempted from the capitation. — 225. C.

- D. P. 210. D. 3. Poor widows do not pay the capitation.
- 211. B. 4. The rolls of capitation for the members of the incorporation in 1748 do not exist.
- 210. B. 5. No servants whatever are mentioned by name, even though they should be married, and have a lodging of their own for their wives and families.

6. The lists of capitation made up at the end of the year, contain very imperfect accounts of the names of persons who lived there in July, six months distant from the date of any list.

— 214 to 224, 226, 227. As a further proof of the uncertainty of the capitation rolls, the defender has produced no less than fourteen persons to depose, that they have at different times, under various pretences, escaped the capitation. The pursuers memorialist treats this proof with contempt, on account of the smallness of their number, and meanness of these witnesses. It should be remarked, that no persons would willingly be brought to give evidence on this point, but such as had nothing to lose by it. None but mean persons would own, that they had tricked the treasury; nor these, if they stood in any danger of being taxed by their own confession. People are ready enough in all countries to cheat the government: and it can scarce be doubted, but that many persons of Mad. Le Brun's rank availed themselves of the protection of the great, and escaped the tax. Every one knows what a foreign minister is: but it were to be wished, that the number and rank of those persons, who have the privilege of French ministers, had been stated with more precision.

— p. 42. The learned memorialist grounds a slight objection to this argument from exemptions, on Mrs. Hewit's assertion, that lady Jane was attended by the people of the house; from whence he infers, that Mad. Le Brun had servants, and therefore her name ought to have appeared at all hazards in the capitation rolls, as paying for her servants. Who but this learned gentleman ever thought of hiring sick nurses by the year? It is not even necessary to suppose they lodged in the house. Lady Jane's sick nurse probably never went to bed during the whole ten days. All that Mrs. Hewit swears, is only, that lady Jane hired no nurse; but that she was attended by such women, as Mad. Le Brun provided.

— p. 44. The memorialist has in this place referred to a recent determination of the parliament of Paris, in the case of Mr. De Rougement. He is called an example "where these registers have been appealed to."



to." He might with more justice have called it an example, where App. 54. the strongest negative proof these registers could give, was wholly disregarded. Mr. De Rougement, an officer of distinction, claimed to be the son of the late sieur de Hatte. He had been described in his act of baptism, " \* comme fils d'Etienne Rougement, officier, demeurant cul de sac St. Pierre:" he appealed to the capitation rolls to show, that no such person as his pretended father, Etienne De Rougement, ever existed at any time in that quarter. And though the credit of the capitation roll was supported by a very good second, the army-list, M. De Rougement lost his cause, and remained the son of a man, who according to the pursuers logic never existed. These Paris rolls may perhaps dupe the learned in Scotland: but those of the pursuers counsel, who have been in France, will be the first to laugh at those, who are duped.

This argument from the capitation rolls is certainly the strongest of these presumptive proofs, which the pursuers use against the existence of Mad. Le Brun. And yet it is remarkable, that all the witnesses to this point are produced on the part of the defender; and by their appearance on his side, they bear an honourable testimony to the conduct of those gentlemen employed to serve him; and prove, that they wished only to discover truth. In the next argument the pursuers will shew us *what they have done for themselves.* Mem. pt. 5. p. 52.

## S E C T. IV.

*Of the Pursuers Search for Mad. Le Brun.*

N O body will believe, that the agents for the pursuers ever took any real pains to find Mad. Le Brun. That was doubtless the defender's business; however, the Tournelle, it seems, employed an huissier in 1763 to make a search; and the pursuers have thought good to bring him into the process in 1765. Mr. Charlier, the huissier, says, that he went from the Pont Neuf to the Luxembourg, through the rue de la Comedie, and through all the streets on the right and left, " † pour découvrir & constater, si en l'année 1748 il demeuroit dans aucune des dites rues une femme du nom de Le Brun tenant hotel garni:" he afterwards enlarges, and adds, " tenant hotel, ou chambre garni," P. P. 180. c. — 180. H.

\* " As son of Etienne De Rougement, an officer living in the street cul de sac St. Pierre."

† " To discover and ascertain, if in the year 1748 there lived in any of the said streets a woman of the name of Le Brun, who kept an hotel garni, ready furnished lodgings, or an eating house."



“ *où qui donna à manger.*” Thus being sent to search for Mad. Le Brun in a class of people, where she was not to be found, he returned without his errand. And this transaction proves very well, that the pursuers did avoid to make the properest search for her : for the parliament of Paris, which permitted this special search for a woman, who kept an inn, an eating-house, or furnished lodgings, would have directed a general search, had it been desired.

The learned memorialist quotes the *Monitoire* as a means of finding Mad. Le Brun. The writer of these papers has already said, what he thinks of the passage in the *Monitoire* here referred to. He cannot help conjecturing, that it is by mistake of the printer, that the passage appears at length in English in the pursuers memorial ; for surely no one can read, that the delivery in the house of Le Brun was pretended, that lady Jane was brought to bed by a pretended accoucheur, and that the ondoyement was pretended ; and think that these circumstances, published by the authority of the magistrate as points already proved, would ever invite the true Mad. Le Brun to come in revelation.

These seem to be all the arguments produced by the pursuers to prove the non-existence of Mad. Le Brun. How far they amount to a sufficient evidence of the absolute non-existence of such a person (a phrase with which they are decorated in the 102d page of Almon’s book) the reader must be left to judge. This euloge is said to come from the same person, who made sir John say, Le Brun was recommended to him by Godefroi, instead of Godefroi’s people. He is said to have added further, page 104, “ Sir John Stewart has also said, that she was recommended to “ them by La Marre ; but this is incredible.” Is it so ? Then it is surprizing, any person should have given himself the trouble to invent it ; for sir John never said one word like it. There seems to be a strange fatality attending every fact this learned person is made to assert, and every consequence he is made to draw. It is incredible, “ *because* it is acknowledged by sir John himself, that “ he never saw Pierre La Marre *at the house* of Mad. Le Brun, till “ the day of the delivery.” Pray may one ask this great logician, whether the person, who advised him to make this speech, gave him that advice after the speech was made, or before ? Who could imagine, that this last fact should be as far from truth as all the preceding ? Yet so it is.—Sir John has expressly said, that he carried La Marre into lady Jane’s room at Mad. Le Brun’s before the delivery. What charity ought we to learn for the old, deaf, and



and blind baronet, when we see such numerous mistakes current under the name of a person of distinguished abilities! Mr. Anderson has indeed taken some pains to remove these blunders a little out of sight. At page 27 in his book we read, "if it was he (La Marre) who recommended Le Brun's"—and "if it was he" who provided the bad nurses."—Such expressions as these assert nothing, and therefore cannot be contradicted. But what can we think of this writer's logical merit, when he grounds his reasoning on two hypotheses, the first of which is not in proof, and the second is contradictory to all the evidence? For it is certain from the depositions, that Mr. La Marre recommended only one nurse, the good nurse of Sholto. In reality, there is nothing incredible in supposing, that La Marre did originally recommend Le Brun's lodgings. Sir John speaks with great diffidence, and says only, Decl. 3. c. that so far as he can recollect, it was Godefroi's people that recommended him to Mad. Le Brun. It is very probable, that La Marre instructed one of Godefroi's people, when Sir John was not at home; and that by that means the recommendation came to Sir John by a servant; as he seems to recollect.

## S E C T. V.

*Of the Defender's Search for Mad. Le Brun.*

**I**T is now time to examine the defender's proof, that there was a Mad. Le Brun Fauxbourg St. Germain in 1748, capable of being the landlady of Sir John and lady Jane.

Though the defender has sufficiently shewn, that the capitation rolls are incomplete, and that an omission in these rolls is never received in the courts of France as proof of the non-existence of the person omitted; yet he has no occasion to avail himself of this argument. The capitation rolls, adjusted at the town-house December the 31st 1748 for the ensuing year, mention five persons of the name of Le Brun: La Veuve Le Brun rue St. Dominique quartier de Sorbonne; and Mad. Le Brun vivant de son bien rue de la Comedie quartier du Luxembourg, are two of them.—It is a pretty striking circumstance in favour of Sir John Stewart, that out of five persons, who appear in the capitation rolls, two of them should undoubtedly be within the possibility of having been the landlady of lady Jane; as these two women certainly are.—These ladies will bear to be looked at very near: but first we must observe, what Sir John and Mrs. Hewit have said relative to the situation of the house, in which lady Jane was delivered.—Sir John

D. P. 307. B.  
— 308. B.

Decl. 3 G. John has unfortunately forgot the name of the street: he remembers only "that going up from the Pont Neuf to the Luxembourg  
P. P. 252. D. "by the rue de la Comedie, it was on the left hand." Mrs. Hewit probably never knew the name of the street, or its situation: she says only, that it was not far distant from Michel's (rue Serpente), that she thinks, the entrance was off the street. And  
— G. for the apartment, she says they had two rooms and a little one, all on one floor; and as she thinks on the first floor.—Mrs.  
— E.  
— F. Hewit deserves the greater credit in this circumstance, as she is very accurate in her description of Michel's rooms.  
— 112. F.  
— 136. D.  
— 253. F. G.

To return to our present subject: when the capitation rolls had been examined, the defender's agents engaged two gentlemen of credit, Mr. Cauvel de Beauvillé and Mr. Masson de la Croisset, to visit those houses, where any person of the name of Le Brun appeared by the lists to have lived at the end of the year 1748. The report of those gentlemen is as follows: 1st, "Mad. Le Brun rue  
D. P. 117. G. "St. Dominique faisoit des menages, & gardoit des malades, &  
— to 118. E. "avoit une fille qui pouvoit être ageé de 15 ou 16 ans en 1748."  
— 120. F. Mad. Le Brun and her daughter are dead, and the house is pulled  
— to 122. C. down. 2d, "† Mad. Le Brun rue de la Comedie, vivant de son  
— 118. B. "bien, faisoit des menages, & gardoit des malades, pouvoit être  
— to E. "ageé de 65 à 66 ans in 1765, & avoit une fille, qui pouvoit avoir  
— 122. F. "actuellement 35 ans; mais cette fille est morte." Mad. Travers,  
— to 123. B. the landlord's wife, said, she could not tell how long this Le Brun had staid in the house: "Si c'étoit trois mois, ou d'avantage.

It is plain, that either of these persons may have been lady Jane's landlady. To get to the rue St. Dominique from the Pont Neuf by the street de la Comedie, one must bear to the left at the hotel de Condé, and leave the Luxembourg on the right: and this street is very near the street Serpente, where Michel lives. And as to the last Mad. Le Brun, who lived in the Comedy-street in December 1748, it is not certain from Mad. Travers's account, that she lived in Mr. Travers's house in July preceding; so that her place of abode is not certainly known. Several of the gentlemen of the faculty inform us, that these gardes malades change their quarters very frequently.

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\* "Mad. Le Brun, in the street St. Dominique, dressed people's rooms, attended sick people, and had a daughter, who was about fifteen or sixteen years of age in 1748."

† "Mad. Le Brun, in the street de la Comedie, living on her income, kept people's houses, and attended sick people, may now in 1765 be about sixty-five or sixty-six years old, and had a daughter, who would now be thirty-five years of age; but she is dead."



Sir John and Mrs. Hewit have both been embarrassed in recollecting, whether there was or was not a widow, who lodged with Mad. Le Brun. And it is remarkable, that a widow is marked in the rolls in the house with the latter Mad. Le Brun: and two women appear with the former, either of whom might be a widow.

Decl. 3. L.  
— 5 C.  
— 8. A.  
P. P. 253. B.  
D. P. 308. B.  
— 307. E.

The very distinguished page of Almon's book above quoted informs us, that Mad. Le Brun rue de la Comedie could not be lady Jane's landlady, because it appears she was only a lodger: but this is a mistake, for want of consulting Boyer's Dictionary, where it may be found that locataire signifies a tenant as well as a lodger.—Mr. Travers did not live in his own house in the Comedy-street in 1748.

There is a pretty extraordinary circumstance relative to the Mad. Le Brun who lived in the Comedy-street, which has not yet been mentioned. Mad. Travers told these gentlemen, that she had seen Mad. Le Brun three weeks or a month before they came to enquire for her; and yet she has not been found.—The pursuers learned memorialist triumphs in this; and says, the defender's people might have found her if they would.—But why would not the pursuers find her for them? Certainly if she was the person, in whose house lady Jane was brought to-bed, the defender's counsel would have produced her if they could: if she was not the person, one would have thought the pursuers would have taken a little pains to prove that she was not.—She has disappeared all at once on the report of Mess. Beauvillé and Masson: if she was not the person the defender wanted, he could have no more interest in sending her away, than in sending away the other persons of the same name: if she was the person, it was of the utmost consequence to the pursuers that she should not appear.—After all, she may have slipped out of the way on her own affairs: and whether this is to the loss or advantage of Mr. Douglas cannot be ascertained by the hearsay evidence of these gentlemen.

— 123. A.  
— 123. A.

This is not the whole of the defender's evidence: he has examined several living witnesses, who clearly establish the existence of a Madam Le Brun.—Dr. John Gibson, a physician of Glasgow, was at Paris in the year 1745, and knew a woman of the name of Le Brun, who was a garde malade, and received lying-in women at her house. He was introduced by Mr. Gregoire, a man-midwife, and commenced the practice of man-midwife in her house. The apartments were but mean; the situation of the house not far from the street Pierre Sarazine; but the doctor's

— 394. B.  
— 395 F.  
— 396. A.  
— 394. C.  
— 395. D.

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memory fails at the same point with Sir John Stewart's, and the name of the street is forgotten. Mad. Le Brun was a middle-aged woman—the doctor never saw any daughter.—The doctor's description of this woman agrees with either of the persons whose names appear in the capitation rolls; and the street Dominique is not far from the street Sarazine.

D. P. 67. E.

— 67. F.

Mr. Menager deposes, that he knew, that Mr. La Marre was connected in 1747 or 1748 with a Mad. Le Brun, who had a daughter: that he presumed this Mad. Le Brun was a garde malade, because Mr. La Marre often spoke to her in private: he never knew where she lived, but guessed it might have been somewhere in the quarter of St. André des Arts, because he often saw Mr. La Marre turn down the street L'épron, which leads to the street Paon. Mr. Menager deposes, that he told all these circumstances to Mr. Andrew Stuart in 1762, in presence of Mr. Gilles; and that Mr. Gilles told Mr. Stuart the same things.

— 68. A.

— 67. E.

— 68. E.

— 73. A.

— 74. A.

— 74. B.

Mr. Gilles, the gentleman to whom Mr. Menager appeals, has deposed, “ \* Qu'il n'a jamais connu de dame appelé Le Brun, “ ni n'a entendu dire par le Sieur La Marre, qu'il connût une dame “ de ce nom: que Monf. Stuart & Monf. Menager étoient présent, lorsque le Sieur Buhot parlât au déposant, & qu'alors il luy “ fit le même recit, qu'il vien de faire ci-dessus; qu'il a fait le “ même recit à Mess. Burnet & M'Conochie ici présent, ne leur “ disant que la même chose, parce que s'il avoit dit autrement, il “ auroit dit faux: qu'il fit aussi le même recit à Monf. Moreau.”

Mr. Gilles flatly contradicts Mr. Menager on the subject of Mad. Le Brun: he not only denies his knowledge of any woman, who bore that name, but he also denies that he ever said he knew her. The defender's agents, desirous to support the credit of Mr. Menager, and to secure, if possible, Mr. Gilles's testimony to the existence of Mad. Le Brun, recollected that they had in their possession the account formerly given by Mr. Gilles to Mr. Moreau.—These gentlemen had the year before desired Mr. Morand to ask Mr. Gilles, what he knew about La Marre and Le Brun. Mr. Morand having but little acquaintance with Mr. Gilles, engaged

— 85. F.

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\* “ That he never knew a woman called Le Brun, nor heard La Marre say that he knew “ a woman of this name; that Mr. Stuart and Mr. Menager were present, when Mr. Buhot spoke to the deponent, at which time he told him the same things, he has now said; “ as he also did to Mess. Burnet and M'Conochie here present, and said nothing else to “ them, because if he had said any thing else, he should have told a lie; and that he gave “ the same account to Monf. Moreau.”



his friend Mr. Moreau to make the enquiry, and gave him in writing the questions, on which he desired information. Few people of science in Europe are unacquainted with the illustrious character of Mr. Morand, and Mr. Moreau is a man of distinguished abilities and integrity; so that no suspicion can be had of those gentlemen: the questions are brought into process in the handwriting of Mr. Morand, and the answers in that of Mr. Moreau, who has deposed, that what he has written was dictated to him by Mr. Gilles. D. P. 81. c.

Mr. Morand asks, “ \* S’il auroit eu connoissance de la femme — 82. F.  
 “ Le Brun, chez qui Monf. La Marre a reçu l’enfant ?” And Mr. Gilles answers, “ Sçait, que la dame est accouchée chez la dite Le — 83. D.  
 “ Brun de deux enfans, selon ce qu’à dit le Sieur La Marre dans  
 “ le tems.”

After this convincing proof of the falshood of Mr. Gilles, no great stress can be laid on any thing he says. Such double dealing is always a reasonable ground of suspicion against any witness. Great part of the pursuers elaborate memorial is taken up in a fruitless endeavour to shew, that Sir John Stewart and Mrs. Hewit have contradicted themselves. All courts and all parties admit, that a witness, who is known designedly to have sworn contrary to what he has formerly said on the same subject, loses all his credit: and if it be allowed to entertain any particular opinion from the circumstances of the present case, it is certainly much more probable, that Mr. Gilles told the truth to Mr. Moreau, than that he has deposed it in this process.

There are more witnesses of the same odour.

François La Marre, a younger brother of Pierre, swears, “ \* Qu’il P. P. 184. L;  
 “ n’avoit jamais connu à Paris Mad. Le Brun sage femme; qu’il  
 “ ne fait pas que son frere ait connu, ou ait été lié avec une femme  
 “ de ce nom là.”—But all this was false; and Mr. Andrew Stuart knew it at the time François La Marre made his deposition.—Mess. Stuart and D’Anjou had an interview with this François La Marre in April 1763, and what passed at that time is in pro-

\* “ If he was acquainted with the woman Le Brun, in whose house Mr. La Marre received the child? — Mr. Gilles answers, Knows that the lady was delivered in the house of the said Le Brun of two children, as La Marre told him at the time.”

† “ That he never knew at Paris Mad. Le Brun a midwife; and that he does not know, that his brother knew, or was connected with any woman of this name.”

D.P. 1031. c. cefs—“ † Sur la question, que Monf. Stuart lui a faite, pour favoir fi fon frere n'avoit pas connu à Paris une dame Le Brun, il nous a dit fur le champ, & fans hésiter, qu'il avoit connu une dame Le Brun accoucheuse, demeurante rue de Seine, Fauxbourg St. Germain; que lui, François de La Marre, l'avoit parreillement connu, qu'il l'avoit souvent vue dans fa maison, rue de Seine, & que cette maison étoit vers le milieu de la rue.” In this conversation he added several more particulars about this Mad. Le Brun, which may be seen in the same page.

— 1031. f. These gentlemen had a second conversation with this François, on the 6th May 1763.—He then told them, “ Qu'il avoit vû deux messieurs étrangers le 7 du même mois (c'est à dire Avril); qu'il leur avoit répondu la même chose qu'à nous, qu'il nous a répété exactement, *sauf l'article de Mad. Le Brun.*”

It is plain by these excerpts, that François de La Marre is a villain in grain; and that he held a different language to the two parties at the same time. It appears too, that the point, which the pursuers agents wished to conceal at this time, was the existence of Mad. Le Brun. After they had obtained the examination of sir John Stewart from the Court of Session, they flattered themselves with the notion, that they could parry all the evidence about Mr. Menager's La Marre, whom they call La Mart, with the pen of sir Adam Ferguson: but they wished to conceal Mad. Le Brun from the defender and from the court.—That François La Marre was desired to deny his knowledge of a Mad. Le Brun to the defender's people appears from hence:—his report on the 6th of May 1763 to the persons who employed him, is as false as his oath in the year 1765. He did tell Mr. Murray, that he knew Mad. Le Brun, and named the street where she lived.

— 448. E. Mr. Robert Douglas deposes, “ that he was present, when Mr. Murray sent for François La Marre in 1763, who told him, that there was a woman of that name who lived in Paris, and with whom his brother Pierre La Marre was acquainted; and thereupon he gave to the said Mr. Murray a direction, where

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† “ Upon the question, which Mr. Stuart put to him, to know, if his brother was not acquainted at Paris with a Mad. Le Brun, he told us immediately, and without hesitation, that he was acquainted with a Mad. Le Brun a midwife, who lived in the rue de Seine, Fauxbourg St. Germain; and that he, François de La Marre, also knew her, and that he had often seen her in her house in the street de Seine, and that the house was about the middle of the street.”

\* “ That he had seen two foreign gentlemen the 7th of the same month (i. e. April), that he had told them the same thing as he had told us, which he repeated exactly, *except the article about Mad. Le Brun.*”



“ or in what street Mad. Le Brun lived.” It is presumed this was a false address, for Mad. Le Brun was not found.

Had François La Marre spoke truth to Mr. Murray, he really told him more than he had told Mess. Stuart and D’Anjou; for he made them believe, that he did not know whether Mad. Le Brun was living or dead. D.P. 1031.D.

After all, this witness shewed some remorse; for though he swore before he deposed, he refused to sign his deposition afterwards. Mr. Anderson has told us, p. 481 (*a*), “ If the defender could have produced the shadow of evidence of Mad. Le Brun’s house and family, or of any other house where she could be supposed to have resided, and to have been delivered upon the 10th of July, some argument might from thence have been formed.” Mr. Anderson is very gracious in this passage: to a common understanding the shadow of evidence could support no more, than the shadow of an argument; Mr. Anderson allows the defender to form a real argument.—But let us be serious, when we are considering a point of such importance to the interest of mankind.—The writer of these papers dares appeal to the known good sense of the gentleman, to whom this assertion is imputed, whether he does not firmly believe, that the extracts just quoted are more than a shadow of evidence of Mad. Le Brun’s house and family. We are sure that François de La Marre concealed a Mad. Le Brun from the defender; we are sure that he informed the pursuers with all possible haste of what he had done, as an action, which he believed would be acceptable to them; we are sure that the Mad. Le Brun, whom he concealed, was in a situation of life, in which we must expect to find the landlady of lady Jane by the accounts of Mrs. Hewit and Isabel Walker. Surely this conduct is more than a shadow of evidence, that this Mad. Le Brun was known to be the real landlady of lady Jane; for what other notion could induce François de La Marre to conceal her name? It confirms the testimony of Mr. Menager; it explains the conduct of Mr. Gilles; and if the industry of the agents for Mr. Douglas had not been directed to vindicate the honour of lady Jane, as well as to defend their client, it would have justified them in renouncing any further solicitude about Mad. Le Brun. They might have told the court, she was kept up from them. —186. D.

The next witness for the defender is an inn-keeper at St. Germain en Laye, whose name is Le Brun. She is brought to depose what she may have heard from one dame Fontaine, lately deceased.

D. P. 93. D. She deposes, “ \* Que la dit dame Fontaine n’a point dit à la depo-  
 “ fante chez qui on disoit que la dame étoit accouchée, & qu’elle  
 “ (dame Fontaine) n’en savoit rien elle-même, ni n’a dit à la de-  
 “ posante, par qui cette dame avoit été accouchée.” And she  
 — 93. F. adds, “ Qu’elle s’est toujours expliquée à ce sujet d’une manière  
 “ uniforme, autant qu’elle a pu s’en souvenir; mais que ne pou-  
 “ vant se rappeler le detail de toutes les conversations qu’elles a eû  
 “ à ce sujet, si elle s’étoit trompée en quelque chose dans ces con-  
 — 94. A. versations, ce qu’elle dit à présent, sous la foi du serment, est  
 “ la pure vérité;—qu’elle n’a jamais entendû dire, que la dame  
 “ étrangere fut accouchée chez une personne du nom de Le  
 “ Brun.”

This Mad. Le Brun has a very extraordinary memory; for the de-  
 fender has clearly proved by two unexceptionable witnesses, that  
 only four days before she made her deposition she had given a very  
 circumstantial account of many facts she had learnt nine years be-  
 fore, i. e. in 1755, from dame Fontaine; in particular, that  
 dame Fontaine then told her, that seven years before that conver-  
 — 96. D. sation, i. e. in 1748, “ \* Il y avoit une dame étrangere d’une  
 “ grande distinction, qui étoit accouchée de deux jumeaux; que  
 — 99. C. “ l’accouchement avoit été fait par un Sieur La Marre chez une  
 “ femme nommée Le Brun.” So that we see, that in only four  
 days time this woman is transmuted by some secret chemistry from  
 a strong witness for Mr. Douglas, to a very artful agent for the  
 pursuers.

Mem. pt 3.  
 p. 50. The learned memorialist triumphs much on another part of her  
 deposition. She says, that she learned all she knew about this  
 affair very recently from a gentleman, who told her the lady was  
 lately dead, and had left ten thousand livres to the Mad. Le Brun,  
 in whose house she had been delivered; and asked her, whether  
 P. P. 182. D. she was that person; to which she answered, that she was not.—The  
 pursuers have brought Mr. Le Brun to depose, that his wife told  
 him of this application, and of her answer. Notwithstanding this  
 there is very little reason to believe, that any such offer was made

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\* “ That the said Mad. Fontaine did not tell her the deponent, in whose house it was said  
 “ that the lady was brought to bed, and that Mad. Fontaine knew nothing of it herself; and  
 “ did not tell her, by whom the lady had been brought to bed.—That she always spoke of this  
 “ matter in a uniform manner, so far as she can recollect; but as she cannot remember eve-  
 “ ry circumstance of all the conversations, which she has had on this subject, if she was mis-  
 “ taken in any thing in these conversations, what she has now said upon oath is the real  
 “ truth.—And she never heard, that the foreign lady was delivered in the house of a per-  
 “ son of the name of Le Brun.”

† “ There was a foreign lady of great distinction, who was brought to bed of twins;  
 “ that she was delivered by one La Marre, in the house of a woman named Le Brun.”



to Mad. Le Brun, both because she never mentioned it to Mr. D.P. 97. A. Valfort and Mad. Le Fevre, and because there is little reason to — 99. F. suppose she would have rejected the offer, had it been made; since it is known that she has sworn falsely in many particulars, for which nobody would give her half that sum.

These depositions seem intended to prove a great deal more than the bare existence of a Mad. Le Brun: and so they do; provided it be found, that Mr. La Marre of Montreuil sur Mer was the real accoucheur of lady Jane: but they are still properly introduced in this place, because the existence of a Mad. Le Brun sage femme and garde malade is the only point, which they establish by positive testimony; and because they serve to show, that many artifices were used to conceal the existence of Mad. Le Brun.

## S E C T. VI.

*General conclusions in the case of Mad. Le Brun.*

**T**HERE may be other accounts of Mad. Le Brun dispersed over the proof; but what has been already quoted is sufficient to bring us to some general conclusions.

1st. It appears that Mrs. Hewit's depositions, and the accounts she gave to Isabel Walker, point out Mad. Le Brun as a *garde malade*.

2dly. As it is admitted, that sir John and lady Jane did live several days in some house, after they had left Godefroi's, and before they went to Michel's; and as their names are not in the police-register kept at inns and hotels garni during this period, this is a strong confirmation that they lodged in some house not subject to the regulations of police.

3dly. As to the evidence of the non-existence of Le Brun arising from the records of capitation—if Mad. Le Brun was a Swiss, or Genevese, or wife or widow to a Swiss or Genevese—if she was the wife of a member of any fraternity, who had no journeymen, apprentice, or servant; or if she was a poor widow—if she, or her husband, was retained by any minister, foreign or French—if she was the wife of a maître d'hotel, valet de chambre or domestique of any gentleman whatever;—or if she left Fauxbourg St. Germain, or changed her condition by a second marriage before the 1st of January 1749, her name would not be found in any of the rolls of capitation, which have been hitherto examined.—And even inde-

independent of all these legal exemptions, there are very many instances of people liable to be taxed, who do not pay the capitation.—And these rolls of capitation have never been sustained in France as evidence of the non-existence of any person.

4th. We have found two women in the capitation rolls of the name of Le Brun, both gardes malades, who lived in the Fauxbourg St. Germain, and in the part described by sir John and Mrs. Hewit. They had each of them a daughter in 1748; and as far as appears in proof, either of them may have been the landlady of lady Jane.

5th. There is full, direct, and credible testimony of living witnesses, that there was in Paris in 1748 a woman of the name of Le Brun, a garde malade, who was intimately connected with an accoucheur, whose name was Pierre de La Marre.

6th. There is great reason to believe, that one of the women named Le Brun, who are mentioned in the capitation rolls, was living in Paris when this process began. By what accident she disappeared is not known; but when we reflect on the character and conduct of François La Marre, and Mad. Le Brun at St. Germain, we cannot but consider them as very proper instruments, in the hands of the person who dictated Mr. Duruiffeau's deposition, to persuade that woman to retire where she might never be found.

7th. It does not appear by the capitation rolls, that the name of Le Brun is so common in France, as to engage sir John Stewart to fix upon it, if he had not really lodged with a woman of that name.

Upon the whole it is certain, that the pursuers negative proof is insufficient, elusory, and suspected; and that the defender has proved the real existence of a Mad. Le Brun garde malade in 1748.

#### S E C T. VII.

*Of the state of the question about Mr. La Marre.*

THE dispute on this subject is of a very singular kind. It has been seen that the pursuers agents had found a Mad. Le Brun, and her patron and protector Lewis Pierre de La Marre, so early as autumn 1762, before the cause began; and knew all, or at least most of, the circumstances relative to these two persons; which have since appeared in process. As soon as the cause commenced, sir John Stewart was examined. A very considerable

part



part of this judicial declaration is employed in the description of the person, connections, country, and engagements of Mr. La Marre.—The pursuers bring no evidence to prove the falsehood of this part of the declaration, other than a presumptive argument. Sir John's account remains uncontradicted; but it is at the same time unsupported. No witness has been produced by the defender, who can give any account of a Pierre La Marre, so circumstanced in all points as sir John Stewart has described him: from whence the pursuers are led to argue, that sir John Stewart's declaration is weak, and incompetent; and say, that it is insufficient to establish such an important point as the existence of Mr. Pierre La Marre, who by his age and profession must have been known to many persons at Paris, and other places where he had lived. The defender's counsel, sensible of the advantage he would receive by finding the accoucheur of lady Jane, had no sooner arrived at Paris, and learned from Mr. Menager and others the history of Lewis Pierre de La Marre of Montreuil sur Mer, and the many striking circumstances of his delivering a foreign lady of twins, but they were willing to fix on this person, pointed out by the French witnesses, as the real accoucheur of lady Jane.—The pursuers on the other hand endeavour to show from sir John Stewart's declaration, that this La Marre, who practised at Paris, could not be the person described by sir John Stewart. And secondly, that, independently of the discrepancies between the two, he could not be the accoucheur of lady Jane. We have therefore two subjects of enquiry.

1st. We must learn, what reason there is to believe, that Lewis Pierre de La Marre was the accoucheur of lady Jane.

2d. We must examine sir John Stewart's declaration.

## S E C T. VIII.

### *Of the French accounts of Lewis Pierre de La Marre.*

THERE are but two witnesses in process, who appear to have had any intimate connection with this Lewis Pierre de La Marre. They are Mr. Menager and Mr. Gilles. We have seen an example of Mr. Gilles's falsehood already; so that Mr. Menager is in fact the only credible witness. How this happened, may be guessed from a short account of the conduct of the parties, before these gentlemen made their depositions.

The pursuers agents made an early search into the register of D. P. 305. E. St. Cosme: they there found a person of the name of Lewis Pierre



Pierre La Marre licensed to practise chirurgie in the year 1750; and were referred to Mess. Menager and Gilles, as persons who could give them information about Mr. La Marre. Mr. Andrew Stuart and Mr. Buhot had an interview with these gentlemen in October 1762. What past at that interview is not certainly known. Mr. Menager has sworn, that he told Mr. Stuart all that he has since deposed; and that Mr. Gilles related the same circumstances. Mr. Gilles's deposition is very different from Mr. Menager's; and he also has sworn, that he told Mr. Stuart in the conference the same that he has since deposed; and believes that Mr. Menager "dit quelque chose de plus."

D. P. 68. D.

— 74. A.

— 74. I.

Had Mr. Gilles really told Mr. Stuart what he has since sworn, we might reasonably have expected to see him in the list of the pursuers witnesses; for he expressly contradicts Mr. Menager in the date, and endeavours to remove the whole story one or two years before lady Jane's delivery.—On the contrary, he is brought as a witness for the defender.—Mr. Douglas's agents retained a full conviction, that his evidence would be the same as Mr. Menager's, till the very moment they brought him into this process: and the pursuers agents we may observe, after they had received all the information Mr. Menager and Mr. Gilles could give them, knew of no better way to embarrass the dispute, than by publishing the name of La Mart instead of La Marre: which shews, that they had not in 1763 any idea of those advantages, they have since endeavoured to gain by the deposition of Mr. Gilles.

— 77. C.

The defender's agents have happily preserved the answers which Mr. Gilles gave to Mr. Morand's questions; an account of which has been given already. These have been produced in process. The pursuers agents complain of this conduct, and say they could have served Mr. Menager in the same manner, if they would. It may be so; but yet we must be allowed to wonder at this singular mark of forbearance in these gentlemen, who have introduced such a number of second-hand witnesses to report the conversations of sir John Stewart, lady Jane, and Mrs. Hewit. Certainly as the case appears at present in process, Mr. Menager stands uncontradicted: and Mr. Gilles is convicted of falsehood out of his own mouth.

— 66. F.

But the pursuers have another way of treating ungracious witnesses. Mr. Menager was examined on the part of Mr. Douglas in November 1764. At that time he underwent a very long cross-examination by the pursuers. But not content with this, they cite him again on the 16th and 17th of April 1765, and examine him



him on a variety of trifling and uninteresting circumstances singly calculated to involve him in contradictions. In this whole deposition, which takes up fourteen pages in the printed copy of the proof, there is hardly a single circumstance of which any use has been made, or can be made in this process. The learned memorialist has charged him with two contradictions; but, such as they are, they are both found in his first deposition. In short, no witness in the whole process has stood his ground better than Mr. Menager: and all that the pursuers can say justly against him, amounts to no more, than that he swears under a full conviction, that the delivery, about which he deposes, was the delivery of lady Jane Douglas.

It is time to hear him speak.

Mr. Menager deposes, “ \* Qu’il se souvient, que le sieur La D. P. 67. A.  
 “ Marre dit à lui déposant, ainsi qu’à Mr. Gilles &, à ce qu’il  
 “ croit, au sieur Mellet, qu’on lui avoit annoncé une dame étran- — 67. B.  
 “ gere, qui devoit venir à Paris pour accoucher; qu’il seroit  
 “ fort aisé, que le déposant lui-même assistât à cet accouchement,  
 “ qui pourroit être dangereux, attendu l’âge avancé de la dame;  
 “ que le déposant ne s’est point trouvé à cet accouchement, mais  
 “ que depuis le Sieur de La Marre lui a dit, que la dame  
 “ étoit accouchée de deux jumeaux mâles; qu’il peut y avoir  
 “ 16 ou 17 ans de cet événement, le déposant ne s’en souve- — 67. C.  
 “ nant pas précisément.” [Mr. Menager has observed in his P. P. 436. A.  
 subsequent deposition, that he was with the army in the year  
 1747, and consequently that this conversation with La Marre was  
 certainly after his return in 1748.] He proceeds, “ † Qu’il D. P. 67. C.  
 “ croit se rappeler, que ce fut vers le fin du printems, ou dans le  
 “ mois de Juin ou de Juillet; que le sieur de La Marre n’a point  
 “ dit au déposant, de quel país venoit cette dame, mais seulement  
 “ qu’elle venoit de tres loin, & d’outre-mer, & en dernier lieu  
 “ de Rheims.”—He then relates what he knew of Mad. Le Brun,

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\* “ That he remembers, that Mr. La Marre told to him, as well as to Mr. Gilles, and as he believes to Mr. Mellet, that a foreign lady was recommended to him, who was to come to Paris to lie in; that he should be very glad if he, the deponent, would assist him at the delivery, which might be dangerous in respect to the lady’s advanced age; that he was not present at the delivery, but that Mr. de La Marre since told him, that the lady was delivered of male twins; and that it is about sixteen or seventeen years since this event happened; he does not remember the year particularly.”

† “ He believes he recollects, that it was about the end of the spring, or in the month of June or July; that Mr. La Marre did not tell him, from what country the lady came, but only that she came from afar, and beyond sea, and in the last place from Rheims.”



- D. P. 68. A. which has been quoted already ; and proceeds, “ \* Que le Sieur  
 “ de La Marre a dit à lui, depofant, qu’on avoit confié à fes foins  
 “ un des enfans de la dite dame étrangere ; qu’il l’avoit mis en  
 “ nourrice aux environs de Paris, vers Belleville, ou Ménil-  
 — 68. B. “ montant, & qu’il en attendoit un grand avantage ; que le Sieur  
 “ de La Marre a parlé de cette dame, qu’il avoit accouché, comme  
 — 68. C. “ d’une dame d’une grand maifon, fans lui dire le nom ; qu’il  
 “ a dit, que l’un des deux enfans jumeaux étoit délicat, & que ce  
 “ fut vraisemblablement celui qui refta à Paris, & qui fut confié  
 “ à fes foins.”

- Mr. Gilles’s anfwer to Morand’s questions is in thefe words :  
 — 83. C. “ † Que le Sieur La Marre a avoué à Monf. Gilles, qu’il devoit  
 “ accoucher une dame étrangere, qui pourroit lui faire fa fortune,  
 “ & qu’il l’avoit accouché de deux enfans ; que le dit La Marre  
 “ a compté, qu’il avoit foin d’un enfant qui étoit au Ménil-mon-  
 — 83. D. “ tant.—Monf. Gilles fçait, que la dame eft accouché chez la  
 “ dame Le Brun de deux enfans, felon ce qu’a dit le Sieur de La  
 “ Marre dans le tems.”

It is remarkable, that Mr. Gilles was the firft perfon who mentioned the twins in the converfation with Mr. Moreau: the question is fingly about the delivery: and that he remembers pofitively the delivery at Le Brun’s, which Mr. Menager does not.—When this account came firft to the ears of the defender’s agents at Paris, it was fcarce poffible for them to refrain from applying it to the delivery of lady Jane. There is fuch a variety of ftriking particulars in the account of Meff. Menager and Gilles, as were never likely to be true of any two women fince the French language was firft fpoken; and all of them entirely applicable to the cafe of lady Jane, except the trifling circumftance mentioned by Mr. Menager, that *La Marre* was befpoke before the lady came to Paris; which of itfelf is certainly infufficient to overturn the credit due to all the reft, of the account.

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\* “ That Mr. La Marre told him, the deponent, that one of the children of the faid lady was committed to his care; and that he had put it out to nurfe in the neighbourhood of Paris, towards Belleville or Menilmontant, and that he expected great advantage from this affair; that La Marre fpoke of the lady he had delivered as a lady of a great family, without mentioning the name; that he told him, one of the two twins was delicate, and that it was probably he, who remained at Paris, and was committed to his care.”

† “ That Mr. La Marre owned to him, that he was to bring a foreign lady to bed, who might make his fortune; and that he had brought her to bed of two children: and that the faid La Marre told him, that he had the care of a child, who was at Menilmontant.”  
 — Mr. Gilles “ knows, that the lady was delivered in the houfe of Mad. Le Brun of two children, according to what Mr. La Marre faid at the time.”



The only objection of consequence, which the pursuers memorialist makes to the application of this story to lady Jane, relates to the time. Mr. Menager has given a very good reason, why this transaction could not be in the year 1747; and he is sure it was in 1748: but it appears by this deposition, and by those of the other gentlemen, that La Marre once made mention of a delivery in the chambre de garde at the hotel Dieu, in the presence of Mess. Menager, Gilles, Mellet, and others. These gentlemen had all left the chambre de garde in 1747; and it does not appear, that they ever met together in any one place after they had left the hospital. In answer to this it should be observed, that none of these gentlemen (except Mr. Gilles, who has been pleased to forget all he once said) know any of the particulars of the delivery mentioned by Mr. Menager. They only remember, that La Marre once told them, that he was bespoke for a delivery, and desired their assistance, if it was wanted; and this assistance was asked in so slight a manner, that he never mentioned to any one of them the place where the lady lodged.

Cases of lying-in-women were the frequent subjects of conversation among these young accoucheurs. It does not appear from the depositions of Mess. Mellet and Cocquerel, that what they say relates to one and the same conversation; much less that this conversation applies to the lady, of whom Mr. Menager, and Mr. Gilles formerly, have given such a distinct account: nor is it any derogation from the general credit due to the testimony of Mr. Menager to suppose, that he may have referred to a conversation, which does not belong to the case he describes.—This supposition will relieve his account from the only circumstance, which does not strictly and properly belong to lady Jane. Nothing is so revolting to humanity, or perplexing to a mind desirous of discovering truth, as to find gross mistakes published under the sanction of respectable authority. In Almon's book page (a) 109 we read, that Menager's story is in point of time clearly long prior to lady Jane's delivery; and is fixed to have been in the year 1747. And a subsequent orator page (b) 175 repeats the same observation, and quotes Mr. Gilles to prove, that Dr. Menager was with the army in 1748. Mr. Gilles, as bad as he appears, never said any such thing. Mr. Anderson knows he never did; and has softened this hardy expression at page 121 of his book; we are there told only, "that there is also some reason to believe, that Menager was himself with the army at the pe-

Mem. pt. 4.  
P. 22.

P. P. 402. B.  
D. P. 124. F.  
and 125. A.

(a) Lord President.

(b) Lord Barjarg.



“ riod assigned for lady Jane’s delivery.” It must be owned, the conduct of these publishers is very extraordinary. The daring pen of Mr. Almon’s amanuensis ventures to abuse the public for some time with an imaginary state of facts : from these facts he reasoned right. Mr. Anderson comes after him ; and though this gentleman must be considered as having tacitly acknowledged the falsehood of all the quotations he suppressed, yet with equal intrepidity he presents his reader with the same logical conclusions which Mr. Almon had drawn, though he exhibits only a bare hypothesis in support of them.—Mr. Menager was at the army in 1747, and at home in 1748.

However, the date of this extraordinary delivery does not depend upon Mr. Menager alone, or the other gentlemen of the chambre de garde. Mad. Granet, sister-in-law to Mr. La Marre, depose, “ \* Qu’aïant été un fois promener avec le dit Sieur de La Marre, qui étoit alors marié avec la soeur de la deposante, il quitta la deposante ; & lui dit, Attendez moi ; je vais voir un enfant, qui sera un jour un des plus riches de son royaume, dont je vais payer le mois.” Mr. La Marre was married in 1747.

This is further corroborated by Mr. Simoneau, who depose, that La Marre told him, that he had brought to-bed a foreign lady, for which he had been well paid ; and that he then lived in the rue St. Anne, Bute St. Roche ; which he did not do, till he had left the hotel Dieu.

D.P. 1028. F. Mad. La Marre, the widow of Mr. Lewis Pierre de La Marre, was summoned by an huissier of the parliament of Paris to bring the register of her husband’s accouchements : she answered, that her husband kept none ; but told the huissier, that after her husband’s death she burnt several useles papers, “ dans les quelles il étoit question du nom de Stewart ;” and that her sister Granet knew, that her husband had the care of a child at nurse, “ qui feroit plus riche que tout son royaume.”—This lady has since acted such a double part, that neither side have thought it expedient to summon her as a witness in this process : yet it appears from Mad. Granet’s deposition just quoted, that there was some truth in what she told the huissier.

Mr. Menager, we have seen, remembers that one of the children, of whom he speaks, was at nurse “ vers Belleville ou Me-

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\* “ That having been once to take a walk with Mr. La Marre, who was then married to her sister, he left this deponent, and said to her, Wait here for me ; I am going to see a child, who will be one day one of the richest in his kingdom ; whose nurse’s month I am going to pay.”



“ nil-montant :” In the next part we shall see, that La Marre had a child at nurse under his care in that quarter ; not in the year 1746, but in the years 1748 and 1749.

A singular contradiction runs through several pages of Mr. Anderson’s book, under the name of the person last quoted. He begins with much affectation of candour, and says at p. 118, “ The evidence of Menager and Garnier I cannot disbelieve, in so far as they prove the existence of Lewis Pierre de La Marre.” And then he argues in the following pages, that the delivery, of which the French witnesses speak, was in 1747. This is to reason without reflection ; for if there is one syllable of truth in Mad. Garnier’s deposition, her story must relate to the child whom she suckled with the milk of her son Jerome ; and the parish register of the child’s birth fixes the fact to the year 1748.—Mr. Anderson seems to have intended this speech for the particular amusement of his readers : at page 128 there is a grave remark on lady Jane’s extravagance, who is said to have enquired whether Sir John had got Mrs. Hewit’s spectacles set in silver, at a time they were in want of money. Unluckily the word *set* in lady Jane’s letter is not a verb but a participle : the passage is this ; D. P. 844. B.  
 “ Mrs. Hewit begs to know, if you have got her spectacles set in  
 “ silver, which she got from Mrs. Cockburn, thinking perhaps  
 “ you might by chance have taken them in place of your own.”

If the whole of the French depositions are considered without reference to any other, there is undoubtedly the greatest probability, that the lady and twins described so particularly by Mr. Menager and Mr. Gilles were really lady Jane and her children.

The person and circumstances of Mr. Lewis Pierre de La Marre remain still to be mentioned. They have been deferred to this place, that they might be the nearer to Sir John Stewart’s account of Pierre La Marre, with which they must be compared.

Mr. Mellet describes Mr. La Marre in these words : \* “ Il P. P. 405. E.  
 “ étoit d’une moyenne taille, assez plein de visage, portant ordinairement un perruque nouée, et quelque fois perruque à bonnet.” And Mr. Potron, † “ qu’il étoit d’une taille moyenne D. P. 92. A.  
 “ et mince, autant que le deposant se rappelle, et qu’il avoit les

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\* “ That he was of a middling size, pretty full-faced, and wore ordinarily a knotted wig, and sometimes a round wig.”

† “ That he was of a middling size and thin, so far as the deponent can recollect, and had black eye-brows.”

Pa. 232.

“fourcils noirs.”—It appears from Mr. La Marre's book in process, that he was connected with a Mr. Fontaine. As no extracts from the book are printed, the writer of these papers is obliged to refer to the defender's memorial: in the same place he also reads, that a colonel Fontaine died at the hospital des Invalides in Paris 1761.

P. P. 530.  
No. 6.P. P. 186. I.  
— 188. H.D. P. 125. E.  
— 91. G.P. P. 531.  
No. 7.  
D. P. 305. E.  
P. P. 531.  
No. 8.

Mr. Lewis Pierre de La Marre was born at Montreuil sur Mer January 31st 1711. He came to Paris in 1730, where he continued to the time of his death. He was first employed under his uncle, a barber; and placed in 1734 as apprentice chirurgien to one Mr. Menjon, with whom he continued five years; from thence he went and studied chirurgie at the hotel Dieu, where he remained till December 1746. He was a man of skill and understanding in the profession of midwifery. He married November 14 1747: he was admitted a privileged surgeon at St. Côme in 1750; and died May 15th, 1753.

## S E C T. IX.

*Of the Scotch account of Pierre La Marre.*

**T**HE next point to be examined is the account given of Mr. La Marre by Mrs. Hewit and sir John Stewart.

P. P. 254. I.

— 255. F.

Decl. 7. E.

Decl. 6. B. C.

Mrs. Hewit knows very little about him: she says, that he was a middle-sized man, black and grim, and lean or thin: nor can she say what age he was; nor does she know where he lived in Paris; nor had she any conversation with lady Jane concerning the man-midwife prior to the delivery. That to the best of her knowledge he was a married man; at least she thinks sir John Stewart said so to her about the time of the delivery. All this applies perfectly well to the Pierre La Marre described by Mr. Potron.—Sir John Stewart too says, that Mr. La Marre was not so tall as the declarant, of a thin make, and of a dark complexion.

Sir John is asked, Who was the man-midwife that delivered lady Jane, and in what part of the town did he reside?—His answer is, that Pierre La Marre was the man-midwife. Declares, that in the year 1721 the declarant passed the winter at Liege; and by the means of an old acquaintance, colonel Fontaine, became acquainted with Pierre La Marre, a Walloon, as he believes; and who then said, to the best of the declarant's remembrance, that he had been surgeon to a Walloon regiment. That the first time the declarant was at Paris, as already declared, (this first



first journey is dated in June 1748, when sir John was not at Paris, and has plainly taken place in his disturbed memory, instead of his return from Damartin in August, which he had then totally forgot) accidentally walking in the Thuilleries he met with Pierre La Marre, with whom he had been very intimately acquainted (as is said) at Liege : and it occurred to him, that this was a good opportunity of being served cheaper, than by seeing a first-rate man-midwife at Paris ; as Pierre La Marre had told him, that having been called up upon an “*affaire epineuse*,” he believed he would continue some time at Paris. That Pierre La Marre declined however to acquaint the declarant where he lodged, which in the declarant’s apprehension proceeded from the reason he had formerly given of his coming to Paris : but Pierre La Marre told him, that at certain times he should be found at the Thuilleries, or at the Luxembourg. That the declarant often met with Pierre La Marre at Pelletier’s coffee-house, and at a tavern called the Source de Bourgogne : and that he is persuaded Mr. Pelletier, who is probably alive, as he was in the year 1748 a young man, will remember seeing the declarant and Pierre La Marre together. Declares, that in his apprehension Pierre La Marre was about sixty. — In the sequel sir John enters into a very minute and unnecessary account of the manner in which he met La Marre, when he wanted him. La Marre, who at first refused to tell him where he lodged, was afterwards prevailed to tell him ; as sir John recollected at his second examination. All the following circumstances mentioned by sir John are foreign to our present subject. Decl. 7. E.  
P. P. 246. c.

In confirmation of some part of what sir John declares, there appears in process a minute of conversation, which sir John Stewart had, with Mrs Napier in 1756. In this paper mention is made of colonel Fontaine, oculist to the invalids, and Mr. La Marre, Walloon surgeon of a regiment several years. — 9. 3.

## S E C T. X.

### *Comparison of the two accounts of Mr. La Marre,*

**I**N these two accounts of Mr. La Marre severally brought before the court on the credit of the French chirurgiens and La Marre’s book on the one hand, and of sir John Stewart and Mrs. Hewit on the other, there are some points of agreement, and some of difference.

The description of the person of Mr. La Marre, a married man, is the same in both : and it is remarkable, that this is all that Mrs. Hewit undertakes to remember about Mr. La Marre.

Mr.



Mr. Lewis Pierre de La Marre was connected with a Mr. Fontaine and a Mad. Le Brun : a colonel Fontaine and a Mad. Le Brun are referred to by sir John Stewart, in his account of the accoucheur of lady Jane. Unhappily, Mad. Le Brun is not found, and colonel Fontaine of the Invalides, and Pelletier are both dead.—All and every one of the circumstances of the delivery, and the sending one of the children to nurse, are minutely the same in the accounts of the French witnesses, as in the prior depositions of sir John Stewart and Mrs. Hewit.—Mr. La Marre is known to some of the witnesses by the name of Pierre, to none by the name of Lewis.

Other circumstances of the age, country, and residence of Mr. La Marre are different. Mr. Lewis Pierre La Marre was born at Montreuil sur Mer ; he was only ten years old in 1721 ; was never surgeon to any regiment ; he had a fixed residence at Paris in 1748 ; and never travelled out of France.—Pierre La Marre described by sir John was, as he believed, a Walloon by birth ; was a man in 1721, and had then been surgeon to a Walloon regiment ; came to Paris in the year 1748 on an affaire epineuse. It should be observed, that sir John Stewart mentions La Marre's being a Walloon and surgeon to a regiment in so indeterminate a manner, that no kind of stress ought to be laid on what he there says. It is a very fruitless attempt to reconcile contradictions. It is plain there must be some mistakes in one or other of these accounts ; or that they are distinct and separate, and relate to two different persons of the name of La Marre.

The pursuers agents can read nothing but perjury in the depositions of the defender's witnesses ; which affords an obvious presumptive argument, that they know of little truth in those of their own.—They cannot however be allowed to infer the falsehood of one of these accounts even from acknowledged falsehood in the other.—Mess. Menager and Gilles are entirely distinct personages from sir John and Mrs. Hewit. Nor can it be supposed, that sir John had peeped into Lewis Pierre de La Marre's pocket-book, when he gave the names of Fontaine and Le Brun in 1756 to Mrs. Napier. The French and Scotch depositions must each of them stand or fall by their own respective merit : and we must look for truth, where we can find it.

It is time now to begin our remarks.

1<sup>st</sup>. There does not appear any possible reason to mistrust the French account either of perjury, or mistake. The age, country, and employment of Mr. Lewis Pierre de La Marre are proved by  
records



records.—His acquaintance with Mr. Fontaine appears under his own hand-writing in his book. Mr. Menager is known by almost all the French witnesses to have been the most intimate friend of Mr. La Marre. Either popular belief, or some assured intelligence, pointed out that gentleman and Mr. Gilles to Mr. Andrew Stuart in 1762; and made him desire to have a conference with them. At that time Mr. Menager's account was supported by Mr. Gilles: and Mr. Andrew Stuart parted from them in the persuasion, that Mr. Lewis Pierre de La Marre was the real or reputed accoucheur of lady Jane.—The Scotch were made to believe his name was La Mart.—Mr. Menager has been more strictly examined than any foreign witness in the process; and nothing has appeared to his dishonour. We have seen what sort of persons Gilles and François de La Marre are; and there is little honour to be got by quoting their negative testimony.

2d. There is no mark of wilful perjury in the account of sir John Stewart. He is asked, In what part of the town the man-midwife resided? In reply to this plain question, which might have been answered in four words, *he did not remember*, he runs out into a long and tedious explanation of the manner in which he became first acquainted with Mr. La Marre, of Mr. La Marre's country and employments, his business at Paris, and the motives which engaged him, the declarant, to employ him. He put his memory to the utmost stretch to recollect every circumstance, which he ever heard, or which he barely believed about Pierre La Marre: and leaves nothing unsaid, which might lead to a discovery of this person.—This surely is not the language of conscious guilt. A man, who had every thing to conceal, would never let his answer out-run the question; he would think it time enough to tell the truth, when it was asked.

But there is certainly reason to charge sir John's declaration with very great inaccuracy and inconsideration. Excepting a very few interesting points relating to lady Jane and the children, there is scarce any thing distinctly told: yet not one of his mistakes lies under the least suspicion of design, except his history of La Marre; and if mere want of reflection will be allowed the source of all the rest, why must we resort to a new principle for the solution of this?

Sir John Stewart's declaration was taken hastily, in a manner never in use, but when a witness is secreting himself from the court. Sir John was indeed leaving Scotland; but he was not running away from justice, but running to it; and going to defend



defend himself at Paris, where the attack began almost at the very time he was summoned to appear before the Court of Session : and by an unprecedented prostitution of public justice he was required to defend his life at Paris, and the whole fortune and very name of his child at Edinburgh, on one and the same day. Yet every one knows, and this very declaration is certainly a fresh proof, that he was little able to defend himself any where.—He was so deaf, that the court was obliged to show him the interrogatories in writing : he was so blind, that he could not see that La Marre's letters are all written in the same hand.—Forty-seven numbered interrogatories were produced to him, which contain a hundred and twenty distinct questions. Three, and sometimes four, questions are asked at once ; a method wonderfully calculated to lead a talkative old man, of seventy-four years of age, into confusion and mistake. In many places he answered more than the questions required : and then the pursuers were permitted to form a fresh recruit of interrogatories from such points, as sir John's previous answers had suggested to them.—All this passed, before the defender's lawyers were instructed in any one article of the process ; before the pursuers had given any condescendence of facts ; and indeed before they knew themselves, what they meant to prove, or had any one witness ready, except Duruifseau.—The old gentleman was jealous of his honour, afraid to betray his want of memory, and fell into the snare. There are few of his answers, but what contain some remains of truth, sufficient to show, that he had been once well acquainted with the points on which he speaks : and the pursuers are much more obliged to him, than to Mr. Andrew Stuart for discoveries. But all he says is generally so confused with wrong dates, and perverted by mistake of persons and places, as to afford little certain information ; and to subject him to contradiction from every quarter.

Such is the composition, which the pursuers affect to call the whole proof of the birth of Mr. Douglas. They make their strongest attack upon it, and suppose that the defender must maintain every article of it, or give up his cause. Some of the learned in Almon's book have even gone so far as to say, that after this declaration is given up, the father's acknowledgment of his child can no longer be of any weight. And one of the speakers, who, according to Mr. Almon, had founded his judgment on the res gesta or conduct of the parties, is made by Mr. Anderson to change the ground of his opinion entirely, and to avow, that it remains for him to weigh the evidence, and to say whether he can, or cannot, assent to the whole of the propositions contained in



in fir John Stewart's declaration. If this doctrine prevails, happy are the children, whose parents die young: for daily experience shows us instances of persons, who live many years in a total oblivion of the most interesting transactions of their lives, and can give no other proof of their children's birth, than their parental fondness and affection; an affection which fir John Stewart undoubtedly showed to Mr. Douglas to the last moment of his life.

Some one has observed in Almon's book, that though a defect of memory might prevent fir John from declaring the truth, it could never lead him to invent a circumstantiate falsehood. This is very true: but with submission, there is no invention in this case. A defect of memory does often occasion the application of a real fact to a wrong person, time, or place: every day's experience convinces us of this; and there are many striking instances of it in this process. Lady Rutledge certainly saw lady Jane and her children; but it was at Dunkirk, not at Rheims. Abbé O'Neil visited some strangers at his return from the Jesuit's dinner on December 2d, 1749; but those strangers were not fir John Stewart and lady Jane. The writers of the learned speeches in Almon and Anderson's books, which have been consulted for these papers, may flatter themselves, that many facts, which they assert, are to be found in the proof; when they exist only in the pursuers memorial: and fir John Stewart probably has blended the history of some other acquaintance with the proper account of Mr La Marre.

## S E C T. XI.

### *Conclusion from the different Accounts of Mr. La Marre.*

THE whole of this dispute about La Marre is reducible to the following dilemma. Either we must make some circumstances in fir John's declaration submit to the distinct and determinate evidence of the French witnesses; or we must suppose a separate La Marre, accoucheur, a little, black, married man, connected with a Mad. Le Brun and a Mr. Fontaine. We must suppose another foreign lady, who came to Paris by the way of Rheims in the month of June or July; was delivered of two boys by this Mr. La Marre, in the house of Mad. Le Brun; left her child at nurse under the care of the man-midwife; and did every thing, which fir John and Mrs. Hewit have uniformly declared was done by lady Jane with the assistance of Mr. Pierre La Marre and his Mad. Le Brun, in July 1748. Strange and incredible as  
Q<sub>2</sub> this

this last supposition is, the writer of these papers will for a moment admit it; and proceed to consider, what must be the consequence, if there are two Pierre La Marres.

Each of these persons has a certain claim to be thought the accoucheur of lady Jane Douglas: the first, because he is described by sir John Stewart; the next, because he has delivered a lady in every respect the perfect image of lady Jane. The defender is neither obliged by law, nor encouraged by expedience, to determine their respective pretensions: he is allowed to state them for the judgment of the court.

1. The French evidence being removed as inapplicable to the cause, sir John's account of Mr. La Marre stands uncontroverted, and even uncontradicted.—He always named a gentleman, called La Marre, as the accoucheur of his lady. He appealed to colonel Fontaine in 1756, when colonel Fontaine was alive, and dwelling at the Invalides; and to Mr. Pelletier in 1762, whom he believed to be alive, as he was a young man in 1748. He has told a variety of particulars relative to this person; and shewn a great desire to discover him, but without success. And thus Mr. Douglas is deprived of the testimony of Mr. La Marre; but he has still sufficient proof of his birth. He has brought many witnesses to the pregnancy and recovery of lady Jane; and two, his father and Mrs. Hewit, to the delivery; both of them highly credible and unsuspected witnesses. Mrs. Hewit's mistakes are mere trifles; and sir John's mistakes, though very numerous, are plainly without design, and of no consequence. Even the four letters, of which so much has been written, may be, what sir John says he thinks they are, *of the contents of letters of these dates, which he received from Pierre La Marre*. So that had the defender never came in sight of Mr. La Marre, he could certainly have done very well without him.

2. If sir John Stewart's declaration is abandoned, the evidence of the French witnesses remains without a rival. We have there such a clear and distinct detail of the circumstances of lady Jane's delivery by persons of the names of Pierre La Marre and Le Brun, and of the nursing of the younger child, as can scarce possibly be true of any other woman; and strikes the mind with an irresistible conviction, that the persons here discovered are the real accoucheur and landlady of lady Jane.

A speaker \* in Almon's book (page 93.) is made to say on this occasion, " Strange indeed, that the acknowledgment of the pa-

(a) Lord President.

" rents



“rents should be pleaded by the son, and yet that that son should tell the court, that his father has told falsehoods.” And another † is said, page 188, to have added, “This whole account given by sir John the defender now gives up: but can he give it up, without giving up the cause?”

The writer of these papers does not believe, that the defender has told the court, that his father has told falsehoods, or that he ever meant to give him up. Sir John Stewart has not deserved this usage of him, nor does self-defence require it. The defender may have owned to the court, that there are mistakes in sir John's declaration; for all the world knows they are very numerous: but mistakes are not falsehoods, unless they are wilfully intended. The counsel for Mr. Douglas may probably have observed, that certain persons were determined right or wrong to believe nothing which sir John Stewart has said: and they did well to tell such persons, that they ought to believe Mr. Menager and Mr. Gilles, because there is no ground for rejecting the testimony of sir John Stewart, except the depositions of Mr. Menager and the answers of Mr. Gilles. Those, who refuse to listen to the French witnesses, can never give an honest reason, why they refuse to believe sir John. But then those, who believe that sir John Stewart, the father of Mr. Douglas, has told wilful falsehoods upon the credit of the discoveries made at Paris, must consider these discoveries to be such as, joined to the other proofs, would be sufficient to confirm Mr. Douglas in the possession of his estate, even though his parents had been unnatural, and had given him up. The defender desires only, that these gentlemen would choose their ground, and he is ready to establish the truth of his birth either with or without the evidence of sir John Stewart.

To conclude this head with what seems to recommend itself the most to common sense. Mr. Lewis Pierre de La Marre of Montreuil sur Mer, and Mr. Pierre La Marre mentioned by sir John Stewart, agree in so many points of importance, that it is scarce possible to believe that they are different men. Their names, persons, conditions, professions, and connections as far as known, are one and the same. And certainly Mr. Menager's account of the foreign lady differs in nothing from the account of lady Jane. Sir John entered voluntarily into the detail of the manner in which he became acquainted with La Marre, and has dated it some years too early. The other circumstances, which he mentions, deserve no more credit than what the witness gives them

(a) Lord Alemoor.

himself.

himself. They are what he believes, not what he knows. The accounts, which the French witnesses give of their Pierre de La Marre, make it very credible that he might have reason to conceal himself, at the time sir John first saw him. All this part is only presumptive evidence in this process. The positive proof of the pregnancy of lady Jane, and the birth of Mr. Douglas, may undoubtedly be assisted by the truth of it: but cannot be hurt by its deficiency. Of all the suppositions framed on this subject, that of the pursuers is certainly the most incredible; that Menager has been bribed by the defender's people: because Mr. Menager is without exception the most embarrassing witness, who has been produced on the part of Mr. Douglas.

## S E C T. XII.

*Of the discovery of nurse Garnier.*

D. P. 269. B. **M**R. Menager first suggested the search for Sholto's nurse about Belleville and Menilmontant. Dr. Cotterel the curate of St. Laurence was the first person engaged in this enquiry, in spring 1763. A woman, Rouffelet, was suspected to have been Sholto's nurse: and the doctor was charged with a number of written questions (among which there was mention of Mr. La Marre accoucheur and the twins) which he was desired to put to — 269. D. Mad. Rouffelet. He soon found by this woman's answers that she was not the nurse he wanted, and dismissed her.

P. P. 448. D. Mad. Rouffelet was not acquainted with Mad. Garnier in 1748; their intimacy began about 1755 or 1756, when they became — 448. G. neighbours. She remembers however, that Mad. Garnier had often told her something about a child she had formerly nursed, which was brought to her by torch-light at eight o'clock in the — 449. A. evening; that two gentlemen came to see the child; and that when the child was taken away, she was told, “\* qu'il ne devoit — 450. D. F. “ pas rester à Paris, mais aller plus loin.” Mad. Rouffelet says, that she happened to meet her friend Garnier the same day she had been with Dr. Cotterel; and upon telling her what had passed with the curate, “† Alors Mad. Garnier lui demanda, si “ elle ne se souvenoit pas d'un enfant qu'elle avoit nourri, & dont “ elle avoit parlé à la deposante, il y a plusieurs annees? Qu'à

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\* “ That he was not to remain at Paris, but to go further off.”

† “ That Mad. Garnier asked her, if she did not remember a child which she nursed, of which she spoke to the deponent several years ago? And on this occasion Mad. Garnier added, that she had kept this child eighteen months.”



“ cette occasion la dame Garnier ajouta, qu'elle avoit gardé cet  
 “ enfant 18 mois.” Mad. Garnier relates this conversation with P. P. 446.c.  
 some variation of circumstances.

The pursuers memorialist insinuates, that Mad. Garnier learnt from Mad. Rouffelet all the circumstances relative to Pierre La Marre, which she has since deposed: but we should observe, that Mad. Rouffelet remembers to have heard long before, that the child was a foreign child, and visited by foreigners; which is one of the most material points.

Mad. Garnier must have acted a strange part, if she had adopted a story which did not belong to her, without the knowledge of her husband or any of her neighbours; but her conduct is very easy and natural, on the supposition that she spoke truth. The first remark was scarce out of her mouth, when she reflected, and desired not to be known. Nay, two or three days after, when Mad. Garnier had consulted her husband and friends, and Mad. Rouffelet came to fetch her by order of a gentleman named Fleffelles, she remained in the same mind; and would not go till Mr. Fleffelles had sent his own servant for her. — 450.G. — 451.E.

It was thus the story of Mad. Garnier came to the knowledge of the defender. She tells her story uniformly and consistently. And though the pursuers, not content with her first account, have thought fit to re-examine her a second time for many hours, they have not been able to charge her with any absurdities. She sometimes remembers a conversation, which the other party in the conversation has forgot; and sometimes forgets what the other remembers. And thus we have in this, as in all other cases, the negative testimony of one witness opposed to the positive testimony of another. And this is the only defect, with which the account is chargeable.

The pursuers do not attempt to shew whose child it was which she nursed, or produce any other alibi, than the story of Sanry's child, which we have seen bears a false date. The defender would prove that Mad. Garnier was Sholto's nurse: 1st, from some circumstances in her story, which he thinks can relate to none but Sholto. 2dly, From the coincidence of time.

## S E C T. XIII.

*Of the child, whom Mad. Garnier nursed.*

- D.P. 100. C. **M** A D. Garnier depofes, that ſhe nurſed a new-born child,  
 — 102. B. very weak and delicate, with the milk of her ſon Jerome;  
 that ſhe received this child from Mr. Pierre La Marre, who brought  
 it to her late in the evening, in a coach, by torch-light; that he  
 — 101. D. was accompanied by an aged lady, who did not get out of the  
 coach; that having remarked the weakneſs of the child to Mr.  
 La Marre, he told her ſhe need not be ſurpriſed at that, as it  
 P.P. 443. D. was a twin, the other twin being alſo a boy; that Mr. La Marre  
 D.P. 102. L. hired her two or three days before the child was brought; that  
 — 101. C. two foreign gentlemen, one of whom ſhe took to be the father  
 — 101. F. of the child, came to ſee it twice; that ſhe ſuſpected it to be an  
 — 103. C. Engliſh child by its linen; that Mr. La Marre came by himſelf  
 — 102. F. to take away the child in an afternoon; and that Mr. La Marre  
 himſelf came regularly to pay her months, and never ſent a wo-  
 — 104. B. man; that the child could not ſpeak when he was taken away.

Theſe ſeem to be the moſt material circumſtances in Mad. Garnier's long depoſition. She does not undertake to deſcribe Mr. La Marre, or the gentleman who came to ſee the child.

- Mr. Garnier, who is a day-labourer, was always out; he agrees  
 with his wife in the deſcription of the child; ſays he never ſaw  
 Mr. La Marre or the gentleman; but relates moſt of the circum-  
 — 105. F. ſtances, as he heard them from his wife, at the time they hap-  
 pened; ſays, his wife told him ſometimes, that it was Mr. La  
 Marre, who had been to pay her month; and ſometimes, that it  
 — 105. D. was a lady; and that the child was a fair child; but he does not  
 remember the colour of his eyes.

- P. P. 441. B. Mad. Boucault was the moſt intimate acquaintance of Mad.  
 Garnier in 1748. She confirms every part of Mad. Garnier's de-  
 D.P. 108. C. poſition from her own knowledge, and adds, Mr. La Marre ap-  
 ——— I. peared to be about 40 years old, and that the gentleman “ \* étoit  
 “ un grand & bel homme, qui luy paroifſoit avoir environ 50 ans.”  
 — 110. E. She ſays the child was brown.

Mad. Hercheman, Mr. Garnier's ſiſter, who lived in the ſame  
 houſe, but did not board with Mad. Garnier, is a witneſs, of whom  
 the purſuers make great uſe. She remembers nothing of La Marre,  
 or the twins, or the foreigners. Indeed ſhe knows nothing at all  
 of the matter in debate. But what ſhews, that her negative teſti-

\* “ Was a tall and handſome man, who appeared to her to be about fifty years of age.”  
 mony



mony is of no kind of consequence, is, that she can make no manner of guess at the child's age, when he was brought; and does not know, whether he was weaned, or not, when he was taken away. Circumstances, which must have come to her knowledge, if she had been in the way to know any thing. She says however, that she was present when the child was brought; and that it was a lady alone, who brought him. This may be easily reconciled to Mad. Garnier's account, if we suppose, that Mad. Hercheman did not come to the door, till Mr. La Marre and the child were gone into the house, and the lady left in the coach alone. She says further, that the same lady came to pay the months. Mad. Garnier says, Mr. La Marre came always. Mr. Garnier says, it was sometimes the one, sometimes the other. This is probably the exact truth, which Mad. Garnier has forgotten, and Mad. Hercheman never knew.

## S E C T. XIV.

*Of the Time, at which Mad. Garnier nursed the Child.*

**T**HUS far the presumptive proof stands high in favour of the defender's hypothesis. The next point is the coincidence of time. Sholto was at nurse from the 11th July 1748 to the 14th or 15th November 1749, between sixteen and seventeen calendar months. Mad. Boucault says, Mad. Garnier nursed the child sixteen or seventeen months. But the nurse herself, and the nurse's husband, uniformly persist, in calling the time eighteen months. This had the appearance of a contradiction, but is really none, when we reflect, that all nurses are paid every four weeks; and that Sholto was actually taken from nurse, according to the most accurate account, in the fourth week of the eighteenth lunar month after the 11th of July 1748. By the bye, the intrepid conduct of the poor nurse and her husband in the point just mentioned is a sufficient justification of them from the charge of perjury, which is wantonly thrown out against them by the pursuers. Had they meant to serve Mr. Douglas, they could not but have known long before their second examination, that he would have wished, that they had concurred in the same language with their neighbour Boucault, and with Mrs. Hewit; yet they obstinately and repeatedly persist in calling the time eighteen months. They are more diffident on the following point. The circumstance in Mad. Garnier's account, which differs most from the history of Sholto, is in the date of the time the child was sent

Serv. p. 3. B.  
— p. 108. A.  
D. P. 102. G.  
— 104. F.  
— 105. F. & C.

— 101. C.

R

to



D. P. 105. B. to nurse. Mr. Garnier, and his wife, and all the neighbours are clear, that the child was nursed with the milk of their son Jerome.  
 P. P. 531. Jerome was baptised according to the parish-register on March  
 N. 13. 22d, 1748; and consequently was not four months old till the middle of July. Both Mad. Garnier and her husband seem to say, that he was six months, or six months and a half old, when he was weaned on account of the foreign child, which was then brought to nurse. For greater accuracy it will be proper to quote their words at length.

D. P. 102. D. Mad. Garnier says, “ \* Qu'elle ne se rappelle point, dans qu'elle  
 “ saison cet enfant fut apporté à la deposante, mais qu'elle fait  
 “ qu'alors Jerome avoit six mois, ou six mois & demi, ne pouvant  
 “ le dire precisement.”

P. P. 441. H. In her second deposition she adds, “ † Qu'elle a dit dans sa  
 “ premiere deposition, que lorsque La Marre la chargea du nourris-  
 “ son susdit, son enfant Jerome avoit six mois, ou six mois &  
 “ demi, ne pouvant le dire precisement, qu'elle vient de dire ci  
 “ dessus; qu'elle a gardé & allaité dans sa maison son dit enfant  
 “ Jerome pendant 7 ou 8 jours, qu'elle vient de dire aussi;  
 “ qu'alors elle envoya son dit enfant à Belleville, où il resta 15  
 “ jours, ou 3 semaines, plus ou moins; d'où il s'ensuit, que quand  
 “ son dit enfant revint de Belleville chez elle, & fut entierement  
 “ sevré, il avoit alors six mois, ou six mois & demi, & 7 ou  
 “ 8. jours, & quinze jours ou trois semaines, plus ou moins.”

D. P. 103. E. Mr. Garnier says, “ ‡ Que ce fut vers le fin de l'été, ou au  
 “ commencement de l'automne, *quelques mois plus ou moins*, que  
 “ l'enfant fut apporté chez le deposant. Qu'il ne se rappelle pas  
 “ precisement la saison, où l'enfant a été rendu; mais croit que ce  
 “ fut vers le printems, *attendu* que c'étoit environ dix huit mois  
 “ après

\* “ That she does not recollect, in what season of the year the child was brought to her,  
 “ but that she knows, that at this time Jerome was six months or six months and a half old,  
 “ not being able to tell precisely.”

† “ That she said in her first deposition, that when La Marre gave her the child,  
 “ her son Jerome was six months or six months and a half old, or thereabout, not being  
 “ able to tell precisely, as she has already said; that she kept and nursed her said child Je-  
 “ rome in her house seven or eight days, as she has also said; then she sent him to Belle-  
 “ ville, where he remained fifteen days or three weeks, more or less; from whence it fol-  
 “ lows, that when her said child Jerome returned from Belleville to her house, and was en-  
 “ tirely weaned, he was about six months, or six months and a half, and seven or eight days,  
 “ and fifteen days or three weeks, more or less.”

‡ “ That it was about the end of summer or beginning of harvest, *some months more*  
 “ *or less*, that the child was brought to the deponent's; that he does not remember precisely  
 “ the season when the child was given back, but believes it was about the spring, *considering*  
 “ that



“ après l’avoir reçu ; que lorsque cet enfant fut remis à la femme  
 “ du depofant, leur fils Jerome avoit environ fix mois.”

In his second deposition he adds, “ \* Que fon fils Jerome avoit P.P. 438. c.  
 “ 6 mois 15 jours, plus ou moins, lorsque fa mere l’a fevré pour  
 “ prendre le dit nourriffon ; & qu’à cetté occafion fon fils Jerome  
 “ fut envoyé à Belleville.”

If any one is defirous to fet up this rough guefs of Mr. Garnier’s, of “ quelques mois plus ou moins,” to counterbalance the many ftriking circumftances of refemblance between this child and Sholto, he muft be left to think for himfelf. One may wifh to remind him however, that the Sanrys are miftaken more than two months in the age of their child, at the time they loft him ; and that thefe people appear plainly to confound the time they received the new child, with the time their own fon was brought home from Belleville.

Befides, if it be prefumed, that the child was put into Mad. Garnier’s hands by Mr. Pierre La Marre of Montreuil fur Mer, we may be allowed to fix this indeterminate reckoning by the testimony of Mr. Menager, who fays, the delivery of which he fpeaks happened in June or July.

## S E C T. XV.

*Of the Scotch accounts of Sholto and his Nurfe.*

**I**T is time to turn to the accounts, which Sir John Stewart and Mrs. Hewit have given of the manner, in which Sholto was fent to nurfe, and taken away. It is unreafonable to expect any great precision in fuch trifles.

But ift, It would be unjuft to the purfuers to fupprefs, that fir John Stewart has faid in his declaration, that the child was at nurfe in a village on the road to Amiens, *two or three leagues* from Paris. As favourable as this circumftance is to the purfuers, Decl. 9. c. their memorialift would not let it pafs without an omiffion ; and fir John is made to fay, that the child was fent to a village about three leagues from Paris. Mem. pt. 4th p. 48.

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“ that it was about eighteen months after having received it ; and when the child was given  
 “ to his wife, their fon Jerome was about fix months old.”

\* “ That his fon Jerome was fix months and fifteen days old, more or lefs, when his  
 “ mother weaned him in order to take the faid nurfery ; and that on this occafion his fon  
 “ Jerome was fent to Belleville.”

It would be also unjust to the defender to suppress, as the pursuers memorialist has done, that Sir John has explained this account in his subsequent deposition, and said, that it was but a little distance from Paris; and that the whole witnesses say, that lady Jane and Sir John told them at Rheims in the year 1748 and 1749 that the child was left at nurse "aux environs de Paris." The writer of these papers has explained himself so fully on the subject of Sir John's declaration, that it is needless to add any thing here.

Decl. 9. B.  
Serv. 12. C.  
P. P. 246. B.  
— 255. C.

2dly, With respect to the manner, in which Sholto was sent to nurse, Sir John and Mrs. Hewit both agree in the most interesting points. 1st, That he was sent out the day after his birth by the advice of the man-midwife to a nurse, whom he recommended. 2dly, That he was sent into the country for fresh air, being very weak. Whether the child was carried by La Marre and a woman, or whether the nurse came to fetch the child, is a point on which they disagree. Mrs. Hewit says, that Sir John and the man-midwife went to the country, and found an extreme good nurse, whom they brought to Paris along with them; and lady Jane pressed her to continue and nurse the child Sholto; but she absolutely refused to leave her own house. Lady Jane at last agreed to allow her to carry the child with her into the country. The writer of these papers would be willing to pay great attention to this account of Mrs. Hewit, as he has found her pretty accurate in what relates to the children, if there were not two good reasons to think she is mistaken. 1st, It appears by her letter of July 22d, that she was abroad a great part of the day, in which Sholto was sent to nurse; and by her letter of July 26th, that she was often out till they got nurses; so that she cannot be supposed to speak from her own knowledge. 2dly, What she here says of Sholto's nurse at the end of 15 years, agrees very well with what she writes at the time about Archibald's first nurse; so that it is probable, she either mistook at the time, or has confounded since what lady Jane told her about Archibald's nurse with the history of Sholto's.

— 247. C.

3dly, With respect to the manner, in which the child was brought away, Mrs. Hewit knows very little, only that Sir John and the man-midwife proceeded from a house, where lady Jane remained sick, and returned in some hours with Sholto and the nurse. Sir John says, that when he and Mr. La Marre brought Sholto from the village, a woman came along to the house where lady Jane had been left, and after delivering the child, immediately



ately went away ; but whether it was the nurse herself, or another woman, this deponent does not remember. So that Mrs. Hewit is fully justified, though it should be found, that the nurse never stirred out of her own house. These, and other little differences, are of such a nature as cannot but be expected. They are indeed rather a proof of the artless integrity of the witnesses, than a ground for supposing they do not mean the same thing. By such criticisms as one may read in the pursuers memorial, the writer of these papers would undertake to prove, that Sanry never lost his child, and that sir John Stewart was never at Michel's.

In short this story, as told by Mad. Garnier, bears a striking resemblance to the history of Sholto : it casts no reflection on the testimony of Mrs. Hewit, and furnishes no disgrace to the decayed memory of sir John Stewart ; and it is equally applicable to Mr. La Marre, whether we take our information concerning him from sir John Stewart or Mr. Menager.

*Conclusion to the Pursuers third assertion.*

To conclude this third assertion with one general remark : The pursuers proof of the non-existence of Pierre La Marre and Mad. Le Brun is absolutely defective in its nature. It is besides redargued by the defender, who has shewn the real existence of a Mad. Le Brun by positive proof ; and has gone far to ascertain the man-midwife of lady Jane, and the nurse of Sholto. Whether he has succeeded in this point so entirely as might be wished, the writer of these papers will not undertake to determine : he begs leave only to observe, that the defender's hypothesis may be rendered satisfactory by the supposition only of a few mistakes in some of the witnesses ; the pursuers hypothesis cannot stand, without supposing several persons, of whom we know no ill, to be perjured. In all they have said, François de La Marre is the only person alive, who has pretended to know, where Mad. Le Brun lived. And it appears, that he has endeavoured to ingratiate himself with the pursuers agents, by concealing what he knew about her from the defender.

## CONCLUSION OF THE PURSUERS POSITIVE PROOF.

To say that the pursuers have proved nothing positively, is not sufficient to do justice to the defender. A very strong presumptive argument in favour of the defender arises from the failure of the pursuers proof. The advantages they have received from the indulgence of courts of justice in two great kingdoms, are greater than were ever before known to a prosecutor in a private process; and ought in common sense, and according to the common expectations of mankind, to have produced a complete discovery of the fraud, if any fraud had been committed. What further advantages they have carved out for themselves in the course of their proof, will be considered when we have stated the defender's proof, and are able to form a just estimate of the merit of them both.



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THE  
D E F E N D E R'S  
P O S I T I V E P R O O F.

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*Introduction to the Defender's Proof.*

THIS narration is very obviously divided into six distinct parts, or periods.

- I. *Facts previous to the first observation of lady Jane's pregnancy.*
- II. *An account of the pregnancy from November 1747 to 4th July 1748.*
- III. *Of the residence at Godefroi's and Le Brun's.*
- IV. *An account of lady Jane's recovery and return to Rheims.*
- V. *Incidents which happened at Rheims.*
- VI. *Incidents in the families of the duke of Douglas and sir John Stewart, till the proof closes.*

PART

# DEFENDER'S PROOF. PART I.

## FACTS PREVIOUS TO THE FIRST OBSERVATION OF LADY JANE'S PREGNANCY.

### S E C T. I.

#### *Of lady Jane's birth and marriage.*

P. Mem. p. 1.  
D. P. 434. E. **T**HE late duke of Douglas and lady Jane were the only surviving children of James marquis of Douglas. The duke was four years older than his sister. In 1721 lady Jane went abroad to avoid the addresses of the duke of B———. The insult offered to lady Jane by her intended husband was of such a nature, that the duke her brother thought himself obliged to challenge him for it. The duke had previous to this incident, — 1002. A. B. in the year 1718, made settlements in favour of lady Jane.

In 1725 an accident happened in the duke's family, which obliged him to apply to the crown for a pardon; affected his mind to a very great degree; and occasioned his retirement from the world.

P. P. 331. H.  
— 374. D. About 1735 Mr. White of Stockbriggs gained a great ascendant in the duke's family. In 1738 there was a misunderstanding between the duke and his sister, which arose, it is said, from the duke's having beat a servant.

In 1744 the duke revoked the settlements he had made in favour of lady Jane, but he continued to allow her 300 l. per annum, which was her whole subsistence.

D. P. 999. B. On the 4th of August 1746 colonel John Stewart and lady Jane Douglas were married by Mr. Robert Keith, in the presence of Mrs. Helen Hewit.

— 447. G. Colonel Stewart was in his fifty-eighth year. He had been formerly married to a lady of good family in Scotland, by whom he had one son. After her death he made his addresses to lady Jane, but meeting with a repulse he went abroad for some time: upon his return to Scotland he renewed his addresses to lady Jane with better success. His person was tall (near six feet) and graceful; his manner cheerful and engaging; his conduct thoughtless, and inconsiderate. At the time of his marriage he was heir in tail to about 1000 l. per annum, but had nothing in possession. He died June 14th 1764.

Lady



Lady Jane was forty-eight years of age. She was rather little than tall; thin and fair; graceful and noble in her manner. Every one loved, esteemed, and admired her: and her conduct in 1721, and in this instance, though approved by none, were forgiven by all, but lord Mark Kerr.—That she was at this time capable of bearing children is attested by Dr. Eccles her physician, Mrs. Ferguson her landress, and Margaret Kerr her old servant.

P. P. 174. C.  
— 339. L.  
D. P. 385. E.  
— 37. C.  
— 148. E.  
— 152. A.  
— 385. G.  
— 387. B.  
P. P. 47. C.

Mrs. Hewit was five or six years older than lady Jane: her person was large, tall, and masculine. She is represented by the pursuers, more particularly in their French papers, as a wicked woman; as the confidant and accomplice of Sir John Stewart in all the bad actions they are pleased to impute to him. But nothing of this appears in proof, except that lady Shaw had been told, that she was a suspected Jacobite, and had advised the present match. She had no particular connection with sir John Stewart; she was bred in the family of Douglas; she had been the friend of the late marchioness of Douglas, and continued inseparable from lady Jane through all her distresses. She never received any thing from her, but on the contrary contributed something from her mite to the pressing necessities of lady Jane and her children.—A conduct, which is very far from dishonourable. Several persons of credit speak highly of her character. She persisted uniformly in her testimony to the birth of Mr. Douglas till her death, which happened 22d of September 1766.

— 345. K.  
Requête Août 1763. p. 31.  
Obf. p. 6.  
P. P. 14. F. G.  
— 243. L.  
— 297. E.  
— 451.  
— 452.  
— 453.  
P. Mem. 177.

## S E C T. II.

### *Of Lady Jane's retreat to Holland and Utrecht.*

MANY reasons suggest themselves, why this match should be disagreeable to the duke of Douglas. Among the rest two are very obvious; colonel Stewart's want of fortune, and his political principles, very different (it is said) from those, which his grace had gratefully adopted, and in which he stedfastly persevered. The new-married couple feared his displeasure, and retired from it. A few days after the marriage they set out from Scotland with an intention to go abroad. They met at Huntington, and procured a pass from the Secretary of State's office to go to Holland, a minute of which is entered in the office, and contains these words: " Pass for lady Jane Douglas and Miss Nelly Hewit, together with their domesticks James Kerr and John Douglas, Isabel Walker and Effy Caw, to embark at Harwich, and to embark within fourteen days, over to Holland. Dated 29th of August 1746."

P. P. 29. B.

The persons here called James Kerr and John Douglas were the chevalier James Johnston and colonel Stewart. This was a practice well known at Harwich and Helvoet. In time of war two guineas were exacted of every gentleman as a fee for the pass; so that sir John and Mr. Johnston saved very considerably by passing themselves for lady Jane's domesticks.

Mr. Johnston was a subject of the king's, either then in the French service, or going into [it; and might have reasons for retaining the name of James Kerr through the voyage; as he says he did: but this is falsely referred to by the pursuers as a proof, that colonel Stewart kept the name of John Douglas. Of this there is no proof. Lady Jane tells Mrs. Carse, that she took the name of Grey on the road to save expences: she took her own name to procure the pass; and the giving in the two gentlemen as her servants, served as well to support her dignity, as to save their money. It is certain, that Mr. Stewart appeared as a gentleman aboard the packet, for the master called him colonel Douglas. He was known by Mr. Polson, an old acquaintance, on board the packet, and resumed his own name at Rotterdam. This is all the history of this mighty deceit.

P.P. 29. H.  
 — 29. K.  
 — 30. A.

— 49. F.

— 56. I.

— 28. E.

— 31. L.

Mr. Almon has made one of his speakers (a) (page 300) express his disbelief of Isabel Walker, for this, among other whimsical reasons: "because she does not remember any thing about the "chevalier Johnston, though he went over in lady Jane's own "company in the packet-boat to Holland." This fact is not quite true. Isabel Walker does remember one thing about the chevalier Johnston: she remembers his visits at the Hague. All that she says is, that, so far as she remembers, he did not pass in the packet, though he might be there. It is a very easy thing for a person to conceal himself aboard the packet from any one he has a mind to avoid. Mr. Johnston says, he did conceal himself through the whole voyage under the name of James Kerr, a menial servant: he had very particular reasons for doing so, and the maids were not in the secret. Even Mr. Colvil himself, who was sent by lady Jane for the pass, and desired by her ladyship and Mrs. Hewit to send James Johnston down to Harwich, was never told, that Mr. Johnston was to go to Holland, nor trusted with a sight of the pass which he had procured.

The company went directly to the Hague; and on their arrival lady Jane immediately applied to Mr. Trevor to procure her a

(a) Lord Hailes.

pass



pass to go to the waters of Bourbon, as she was diverted from going according to her first intention to Aix la Chapelle, by finding it was become the seat of the war, and terrified by the report of constant robberies committed in that quarter. Mr. Trevor wrote immediately to Mr. Van Oey, the Dutch ambassador at Paris; but could not obtain the pass, that was desired. These particulars are found in a letter from lady Jane to Mrs. Carse, dated the 18th of October 1746. In this letter she says, she did not intend to stay P. P. 31. long at the Hague.

However, it was the end of December before she removed to Utrecht. The reason assigned for this change was, that Utrecht is higher up in the country, and less damp; and she intended to stay here only till the season of Aix began. Lady Jane, in a letter to Mrs. Carse dated the 10th February 1747, denies her marriage, and imputes the report of it, which prevailed in Scotland, to her cousin Molly Kerr, lately become Mrs. Stewart. — 34. P. — 35. F.

At Utrecht lady Jane became acquainted with the late lord Blantyre. Her marriage was concealed as much as possible; though the suspicion became very strong. — 363. C.

Mad. Negrette has mentioned, that Mrs. Hewit once told her, that lady Jane had a miscarriage in Holland; and that sir John was afraid she would have no children after it: but no circumstances or symptoms of this miscarriage were told her. Mrs. Hewit says nothing of it; and Isabel Walker says, she knew of no miscarriage, but that at Rheims. The pursuers insist, that Mrs. Hewit has here told an absolute falsehood to Mad. Negrette. There is no proof, that the fact is false, and Mad. Negrette is a lady of a most amiable and unsuspected character. It may have happened however, that Mrs. Hewit's Scotch dialect might embarrass a lady, who was more conversant with foreign languages than her own; and that Mad. Negrette has taken her fausse couche from Mrs. Hewit's allusion to some other disorder. It is really pleasant to hear the pursuers argument: "That Mrs. Hewit endeavoured to satisfy Mad. Negrette's doubts about the reality of lady Jane's pregnancy by telling her, that lady Jane had an accident in Holland, from whence sir John concluded, that she would be incapable of having children for the future." D. P. 38. A. — 368. B. Mem. pt 5. br. 1. p. 4.

## S E C T. III.

*Of Lady Jane's residence at Aix.*

P.P. 464. B. ABOUT the middle of April 1747 the family removed to Aix, according to their first plan; and on the 26th of that month entered on their lodgings with Mad. Tewis, a very respectable woman, who had the best apartments in town, and was treated by the persons who lodged with her as a gentlewoman. Lord Blantyre left Aix the 21st of July 1747.

Mem. pt. 2.  
p. 12. Much has been said by the pursuers about the reference made by sir John Stewart, Mrs. Hewit, and Isabel Walker, to the late lord Blantyre as a witness of the pregnancy, who had left Aix before the pregnancy commenced. And they observe "that all these should have fallen into the same mistake is scarce credible." Serv. II. D.  
— 18. B. There is no occasion to conceive it. Mrs. Hewit and Tibby Walker are speaking generally of the British persons, who visited lady Jane at Aix, among whom they mention lord Blantyre very justly. It is more natural to conceive, that they would mention these persons as they occurred to their memories, than that they should attend to a strict chronological order, which was not required of them.

P.P. 527. C. Sir John Stewart's reference in his letter to the duchess of Douglas plainly appears to be nothing but a mistake. "He desires her grace to cause enquire what the late lord Blantyre must probably have told his mother in relation of lady Jane's pregnancy." He does not desire the duchess to believe him; but refers to lady Blantyre; from whom she might have learnt, if she had pleased, that the late lord Blantyre had said nothing about the pregnancy.

D. P. 161. G.  
P.P. 809. B. On the 10th of August 1747, the family made a short excursion of a fortnight to Spa. Sir William Stewart and his lady were there, and observed that lady Jane looked pale, and was troubled with fits of vomiting. They say, that when they heard of the delivery next year, they recollected these fits of vomiting, and imputed them to the pregnancy. On comparing this time with the delivery, the pregnancy could not be commenced, when lady Jane was at Spa. The pursuers make great use of lady Stewart's observation to invalidate the proof of pregnancy drawn from the sickness and vomiting. But it should be remembered, that the sickness and vomiting are never urged separately by the defender



as a certain mark, but only as one of these five marks, which taken collectively form a certain proof of pregnancy.

At their return to Aix they lodged some time at Mad. Champignois', and did not go to their old apartments at Mad. Tewis's till the 14th of September; where they continued till the pregnancy was observed; and nothing passed, but a negotiation for a loan of money, which began at their return from Spa.

It was the constant business of this unhappy family to borrow P. P. 545. A. money. On the 25th of August lady Jane writes to Mr. William Robertson of Edinburgh for 150l. on personal security; and on the 6th of September to Mr. Patrick Haldane for 200l. on her — 537. B. bond of provision, which was then in his hands. In this letter she mentions her design of spending the winter at Bareith, where she might have the free exercise of the protestant religion, and of trying the waters of Carlsbad in Bohemia.

Having no answer to her satisfaction from these gentlemen, she applied on the 10th of October to Mr. Stewart Mackenzie for 200l. — 541. F. on personal security; from whom she received no answer. She therefore tempted Mr. Robertson again with the better security of — 455. K. her bond of provision, which Mr. Haldane had refused; and asked him on the 21st of October for 200l. It soon appeared, that Mr. Mackenzie was too generous to neglect his unfortunate friend, and that the letter had never reached his hand. Lady Jane renewed her application to him on the 10th of November.

In these letters there is no mention of her marriage; and the pursuers accuse lady Jane of prevarication, because she complimented these gentlemen severally as her best friends, and talked to Mr. Haldane a rigid presbyterian about the protestant religion.

It may be proper to mention here, that in consequence of these — 376. applications, she received 100l. of Mr. Mackenzie in December — 543. 1747, and 200l. from Mr. Robertson in January 1748.

From what passed in this first period we cannot expect to learn much. The pursuers have brought these facts into proof in order to shew the conduct of sir John and lady Jane, for which Mr. Douglas owes them thanks. It appears that lady Jane was used to disguise her rank; that she had a reasonable pretence for going abroad; and that she was very capable of bearing children.

## DEFENDER'S PROOF. PART II.

### OF THE PREGNANCY OF LADY JANE FROM NOVEMBER 1747 TO JULY 4, 1748.

#### S E C T. I.

*Of the nature of the proof of a pregnancy.*

**B**EFORE any one sets out on a search, it is necessary he should have a distinct idea of the thing he is to look for, that he may know it when it is found. We are now to examine the proof of lady Jane's pregnancy. We must first learn, what is a proof of pregnancy; for on this point it seems the parties differ.

P. P. 484.  
— 485.  
— 488.  
— 490.

The pursuers have examined several gentlemen of the faculty to prove, that all marks of pregnancy are equivocal; and of consequence, that it is incapable of a certain proof. If this were the case, all the consequence would be, that the defender is not bound to bring a certain proof. A proof, that lady Jane had all those symptoms, which are usually esteemed marks of pregnancy, would sufficiently accredit the after proof of the birth; as a proof, that she had none of these symptoms, would effectually destroy it.

— 490. A.

Mem. pt. 2.  
P. 2.

But in fact, the physicians are not quite so hardy, as to exclude the direct proof of pregnancy. Though they reckon the common marks of pregnancy to be separately uncertain, they allow that the five marks taken collectively are a full and direct proof. Dr. Young is asked, whether he ever met with a woman, who had all the marks of pregnancy following, sickness and reachings, suppression of menses, the breasts swelled, the belly gradually increased in bulk, and perceptible motions in it; whether in such a case he did ever hesitate to declare the woman pregnant. He deposes, that he never did hesitate in such a case. In such a case then, one may suppose the proof of pregnancy to be direct. The pursuers quibble about infallibility.

Perhaps after all the case of lady Jane has not been rightly stated to those gentlemen. They are asked, whether a woman may not have certain changes in her constitution arising from other causes, which yet may be reputed marks of pregnancy,  
so



so as to deceive herself and others? And they answer, she may; and that some of them may go off without any remarkable illness. But the pursuers contend, that lady Jane had none of the marks, no disorder, except reaching and vomiting, to which she was subject at other times; and that all the rest was imposture; that the great belly was put on and off with her cloaths; apparent at Aix and at Liege, indiscoverable at Rheims. The question, which we would wish had been put to these gentlemen, is, Whether a woman in good health can counterfeit the swelling in the breasts and perceptible motions in the belly, so as to deceive those, who see the breasts and touch the belly? It is certain, they would answer in the negative. In this case it is not enough, that the pursuers should say, that Mrs. Hewit and Isabel Walker are accomplices; they must involve Mrs. Hepburn of Keith and Mad. Tewis in the same guilt of confederacy and perjury. They treat Mrs. Hepburn with some respect, but they fall with violence upon the memory of Mad. Tewis. She died before the cause began; but she had given a notorial declaration of what she knew, before her death.

## S E C T. II.

*Of Lady Jane's person in November 1747.*

**T**HE first witness to lady Jane's pregnancy is undoubtedly Mad. Tewis, in whose house she then lodged; not Mad. Scholl, as the pursuers falsely pretend. She attests, “\* Qu'au D. P. 15. F. commencement du mois de Novembre 1747 elle avec les filles de chambre s'étoient apperçues des premières indices de la grosseffe de mylady, par les vomissements reitérés & autres petites indispositions, dont elle se trouvoit incommodée le matin; & par la nourriture particuliere, qu'elle commençoit alors à prendre hors de son ordinaire; & que les deux epouses prénominés peu de jours en après avoient requis Mad. la comparante, leur hôtesse, pour faire placer un deuxième lit dans la même chambre, ce qu'elle avoit aussi fait executer à l'instant.”

Isabel Walker's account is exactly agreeable to this. She says, Serv. p. 18. D. “that, before she knew any thing of lady Jane's being with child, observing her to be frequently out of order, and sometimes

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\* “That at the beginning of November 1747, she and the chambermaids observed the first appearances of my lady's pregnancy by the repeated vomitings and other small indispositions, with which she was troubled in the mornings, and by the particular food she then began to use out of her ordinary course; and the said two spouses a few days after requested her, their landlady, to place a second bed in the same room, which she immediately did.”



“ throwing up ; she was in use to talk to Mrs. Tewis, their land-  
 “ lady, to whom she related lady Jane's complaint, considering  
 “ her as a person of experience : that after some of these  
 “ conversations Mrs. Tewis told her, that she need not be  
 “ alarmed about her lady, for that she was with child : that  
 “ she soon saw, that such was the case ; for lady Jane had all the  
 “ symptoms of a woman in that condition, and that she men-  
 Min. p. 11. G. “ tioned these symptoms to Mrs. Tewis. Being interrogated, if  
 “ before marriage, and after it, before she came to Aix la Cha-  
 “ pelle lady Jane had regularly those symptoms, which are com-  
 “ mon to women capable of child-bearing, depones that she had :  
 “ Interrogated, if she had the same symptoms after she was preg-  
 “ nant, depones that she had not : Interrogated, when these symp-  
 “ toms ceased, and in what house lady Jane then lived, depones  
 “ that she cannot be precise as to the time, supposes it was when  
 “ she conceived, and thinks she was then living in the house of  
 “ Mrs. Tewis : Interrogated, if from the time those symptoms  
 “ ceased, she suspected lady Jane was with child, depones that  
 “ she did : Interrogated if this was one of the symptoms she men-  
 “ tioned to Mrs. Tewis the landlady, as a reason for suspecting  
 “ lady Jane to be with child, depones that she did mention this  
 “ as one of the symptoms.”

Serv. 10. F. Mrs. Hewit has only said, that in the end of the year 1747  
 lady Jane proved with child. It is to be remembered, that Mrs.  
 Tewis answers for Effy Caw, who is dead.

This account of the first appearance of the pregnancy, the sol-  
 licitude of the family upon that occasion, and their several con-  
 ferences, is so easy and natural, that it wants nothing to gain  
 entire belief. The pursuers have nothing to contradict it.

Mad. Tewis was a woman of good sense and liberal education,  
 and much respected by all the people of fashion, who came to  
 Aix. The whole town might be brought to attest her character.  
 D. P. 3. A. She was particularly intimate with lady Jane ; but the approach-  
 — 9. B. ing congress, and the necessity of preparing lodgings for lord  
 Sandwich at Mad. Tewis's, obliged lady Jane to leave her friend's  
 house, which she did on the 5th of January 1748, and lodged at  
 Mad. Scholl's.



S E C T. III.

*Of Lady Jane's person in January and February 1748.*

MAD. Tewis did not remit her attention to lady Jane's situation. She attests, “ ‡ Que successivement, d'un mois à l'autre, elle avoit observée l'accroissement visible de la grosse susdite.” It is needless to add, that Mrs. Hewit and the servants did the same; because their whole conduct shews, they were either fully convinced of the pregnancy and birth, or accomplices in the fraud. D. P. 16. A.

Mad. Scholl was not upon the same footing with lady Jane, as her former landlady. She was frequently invited to drink tea, but always in an afternoon, when lady Jane was dressed in a great hoop, and enveloped “ || de sorte, qu'elle n'a jamais peu remarquer sa taille pour juger, si elle étoit enceinte ou non.” Lady Jane bore her own family name, and was never mentioned as the wife of Mr. Stewart; but Mad. Scholl having discovered a familiarity between sir John and lady Jane, mentioned it to a Capuchin named Emilius, who had been told of the marriage in confession, and now told it in confidence to Mad. Scholl. From this time, “ \* Elle soupçonna, que Mad. Stewart étoit enceinte, parce que cette dame étoit toujours si foible, delicate & pale, & qu'elle portoit toujours un grand pannier, même dans sa chambre.” Her suspicions were entirely founded on her own observations, and her evidence could not be stronger upon the little means she had of being informed. She was very early informed of the birth on 10th July, and found it exactly conformable to her own observations of the pregnancy. 4. B.  
3. A.  
4. A.  
2. F.  
4. E.

The next class of witnesses are three Benedictines of the abbey of St. Anne at Aix. Mad. Hagens, the abbess, deposes, that lady Jane was intimate with Mad. Martel, prioress of the abbey, in 1748; that Mad. de Lambert, present prioress, (but absent when the depositions were taken) and Mad. de Freins a nun, since made, (distracted as it should seem) had been questioned about this affair; “ † et qu'elle croit, que ces deux dames ont sçues & dites à peu pres la même chose qu'elle déposante, & les autres” 23. A.  
C.  
D.  
23. D.

‡ “ That successively from one month to another she had observed the visible increase of the said pregnancy.”

|| “ In such a manner that she could not observe her shape to know whether she was with child or not.”

\* “ She suspected, that Mad. Stewart was with child, because she was always so weak, delicate, and pale, and that she always wore a large hoop, even in her apartments.”

† “ That she believes, these two ladies knew and said almost the same thing, which she the deponent did, and the other nuns of the convent.”

D.P. 23. A. “religieuses de ce convent.” Mad. Hagens says, that she saw lady Jane Douglas once, “† et qu’ à cette occasion elle parut à “ la deposante être enceinte.” This lady is mentioned here the first of the three, because she unquestionably answers for the general opinion of the convent. The pursuers memorialist ridicules the notion of calling nuns to the proof of pregnancy; but when we consider the strict attention necessarily paid to the conduct of the youngest sisters, it may perhaps be the less surprising, that an abbess or prioress of a nunnery should be amongst the first to spy this alteration in a lady’s person.

— 11. B. Mad. De Mesbach was more with lady Jane: she had seen her in her former trip to Aix; and she says, that she now visited the convent frequently: “ ‡ Que la premiere fois, qu’elle vit miladi, elle “ soupçonna qu’elle étoit grosse; & ce fut par la grosseur de son “ corps, & par la maniere dont elle se tenoit, qu’elle soupçonna “ qu’elle étoit grosse; ce qu’elle jugea aussi, parceque la dite “ dame avoit le visage tiré & l’air défaite, différemment de ce, que “ la deposante avoit vue dans son précédent voyage.” She goes on to say, that the same scruples arose in the minds of the other nuns, and that she told it in confession. Some time after this the prioress told them, that lady Jane was married. Mad. Packennius, a nun, confirms every thing, that Mad. Mesbach has said.

— 13. A. These witnesses are placed thus early, because they speak of lady Jane’s ancient intimacy with their then prioress, and of the frequent visits she paid to the abbey; and that the pregnancy was suspected in the very first visit, though Mad. De Mesbach has inadvertently put all the marks of pregnancy, which she had observed in any of the visits, into one general answer. This is a confusion, which often arises from the manner in which depositions are taken.

The pursuers memorialist observes on these depositions, that lady Jane, in order to create a belief in these nuns, that she was really with child, recommended herself to their prayers; that she gave a present of a rosary to the abbess, which she has hung to the image of St. Ann; that it is customary for women with child to recommend themselves to St. Ann; and that it was in consequence of these arts of lady Jane, that they conceived the idea of her being with child. But all this is wilful confusion of facts, and clearly contrary to the evidence. The whole nuns have deposed, that they believed her with child very early; that they communicated

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† “ And that on this occasion she appeared to the deponent to be with child.”

‡ “ That the first time, which she saw my lady, she suspected that she was with child, “ and she thought so, because the said lady’s face was thin and long, and her air defeite; “ different from what she had seen her on her former journey.”



their scruples to each other, and mentioned it to their confessor, before they so much as knew of her marriage; and it was not till she went to the convent to take leave of them, when she was about to leave the place, that she told the nuns, she had need of their prayers, and that she made the present of the chaplet to the prioress.

The pursuers have also said in a place, where it is likely to be soonest and most frequently read, that lady Jane concealed her marriage almost universally, excepting to a Capuchin friar, and to the abbess and nuns of certain convents at Aix-la-Chapelle, and a very few more confidants. How much do such little artifices dishonour their cause?—Lord Crawford and general Macelligot, and several others, were very early acquainted with the marriage; some by choice, and some by necessity. Lady Jane was known but at two convents; this of St. Ann, where she was forced to explain her condition, as we have seen; and another of Mariend, (all which will be mentioned hereafter) where she never told her marriage, though the daughter of her friend Mad. Tewis belonged to it.

Tab. of Contents, p. 14.

#### S E C T. IV.

*Of Lady Jane's denial of her marriage to Lady Catharine Wemyss.*

ABOUT the time the nuns observed the pregnancy, an incident happened, of which the pursuers make great use. Governor Wemyss and his lady had spent the winter 1748 at Bourchette with the late lord Crawford, lady Catherine's brother: they were preparing to return to Scotland about February the 10th 1748. Lady Jane had never owned her marriage, nor did these persons suspect her pregnancy; and what is more, lady Jane thought proper to deny her marriage to lady Catharine.

Governor Wemyss deposes, “ That he had no reason to conclude from any thing he ever heard pass between lady Jane and colonel Stewart, that they were married; that it was often the subject of conversation betwixt the British people there, whether they were or were not married; that he was not sensible, when he left Aix, of lady Jane's having any appearance of a woman with child; nor did he ever think of that matter, not looking upon her as married.”

P. P. 43. K.

Lady Catharine Wemyss is more particular; that lady Jane told her, “ That it was probable she would have heard the story of

—41. E.

“ colonel Stewart and her being married ; and the deponent having answered, that she had so heard both in Scotland and England, lady Jane said that it was a story raised by Mally Kerr, her cousin, in order to prejudice her brother the duke against her ; and that it had been so effectual, that he had stopped her pension ; and that at this meeting lady Jane denied the marriage with sir John ; and desired the deponent, when she went to England, to contradict it.” Lady Catharine had been told, that sir John’s slippers had been seen under lady Jane’s bed ; yet she deposes, “ that as she did not believe lady Jane was married, she took no thought of her being with child.”

This concealment of lady Jane’s was wholly unnecessary with lady Catharine, who is a woman, whom she might and ought to have trusted : it shews however, that there was no design to suppose a child at this time, as the pursuers own, though at the risk of making Mad. Tewis an accomplice. The frankness and candour of lady Catharine makes a strong contrast to the jealousy and suspicion of the nuns, though both are equally credible ; for they shew nothing, but the difference between a liberal and a narrow mind. Indeed lady Jane seems to have suffered, as well from the honour of this noble family, as from the idle talk and scandal of others ; for lady Catharine lived in the same house with her brother lord Crawford, between the time he was in the confidence of lady Jane, and lady Catharine’s leaving Aix ; and was also living with him, when he received sir John’s letter, in which the pregnancy is mentioned. He never revealed it to his sister, whom he loved ; but she is enabled to depose, that the letter, which brought the news of the birth, was the first account she heard of sir John and lady Jane’s marriage, to which she gave credit.

There seems however to be one slight mistake in her deposition ; and that lady Jane rather told her, the duke would stop her pension, (as sir John wrote to lord Crawford) than that he had stop it ; because that must have been known to be false, not only by many people in Scotland, but by their bankers at Rotterdam, to whom lady Catharine was then going.

We must conclude this subject with one remark. The pursuers every where represent Mrs. Hewit as the perpetual confidant and accomplice of lady Jane. Whatever might be her ladyship’s design in denying her marriage to lady Catharine, it is certain Mrs. Hewit was not in the secret. She deposes, that sir John Stewart and lady Jane were often seen by lady Catharine Wemyss and the earl



earl of Crawford, and were known by them to have been married persons; as also by Mr. Wemyss, lady Catharine's husband. These words are printed by the pursuers in Italics to denote, that she is perjured; and we are referred in the margin to p. 41. D. and p. 43. L. to shew, that Mrs. Hewit took Miss Campbell out of the room, before lady Jane spoke. It is probable, that Mrs. Hewit retired with Miss Campbell by lady Jane's order: but whether she meant to conceal what she was going to say from one, or both of them, is not said. Had Mrs. Hewit been an instrument in the fraud, she would certainly have deposed the direct contrary from what she has done. Governor Wemyss and lady Catharine both say, they were often told that lady Jane was married; and this is sufficient to give credit to Mrs. Hewit's innocent assertion, for she certainly could be no judge of their secret belief.

P. P. 42. K.

40. H.

## S E C T. V.

*Of Lady Jane's person in March 1748.*

GENERAL Macelligot gives an early testimony to the pregnancy. After he had mentioned, that he saw lady Jane almost every day from his first acquaintance with her, and frequently more than once a day; and that he sometimes walked abroad with her; he deposes, "That when he first saw lady Jane in 1747, she had not to him the appearance of a woman with child; but that some time afterwards he observed she had qualms, which obliged her to go into the next room, where he overheard her more than once reaching and puking; that from thence he was led to suspect, that she was with child; that he believes, that lady Jane perceiving his suspicions, was from thence induced to confide to him, that she was married to sir John Stewart, and that she believed herself to be with child by him, requesting that he would keep it a secret; that before this confidence was made to him, the appearances of pregnancy seemed to him so clear, that it never came into his head that they were affected or sham'd."

D. P. 352. B.

— 351. D.

Two persons of unexceptionable character saw lady Jane a little later; Mr. and Mrs. Hepburn of Keith had seen lady Jane at the Hague in 1746; and they now came to Aix on a visit to her for about eight or ten days. Mr. Hepburn observes, that it was two months thereafter, that they met sir John at Liege: it was therefore about the 21st of March that they came to Aix. Mr. Hepburn says, "That lady Jane appeared thinner in the face, and

Serv. 8. F.

" not



“ not so well as when he had seen her at the Hague; that he  
 “ took notice of this to his spouse, who said, Don't you observe  
 “ she is with child? and that he accordingly looked at her more  
 “ narrowly next day, and she did appear to be with child.”

Serv. p. 9. A. Mrs. Hepburn says, “ that, when she saw lady Jane at Aix,  
 “ she observed a very great difference from the looks she had at  
 “ the Hague; that her face was very thin; that her belly or  
 “ waist was very thick; her cheeks thin, and her eyes large;  
 “ from all which the deponent had not the least doubt of her  
 “ being with child; that she told this to her husband that night,  
 “ and said to him, that she was sure lady Jane was with child;  
 “ that she told the same next morning to Mrs. Hewit, and said,  
 “ she took it ill, that she had never acquainted her thereof; but  
 “ Mrs. Hewit said, she wanted to surprize the deponent agreeably,  
 “ and try whether she would find it out herself.”

— 18. B. The conversation with Mrs. Hewit is attested by Isabel Walker,  
 — 10. G. who was present, and by Mrs. Hewit herself. Mrs. Hewit says,  
 she answered Mrs. Hepburn, that lady Jane was so bashful, that  
 she would not allow any person to speak of it; which is agreeable  
 P. P. 342. c. to what, Mrs. Hepburn in her second deposition says she learned  
 of Mrs. Hewit either in this or some other conversation.

The next witnesses returned to Aix before the end of March  
 1748. She was then called La Baronne D'Obin, now Mad. Ne-  
 D. P. 35. D. grette. She was acquainted with lady Jane in 1747 at Aix; and  
 on her return immediately visited her. She deposes, “ \* que  
 “ ce fut le jour même du retour de la deposante à Aix-la-Cha-  
 “ pelle, qu'elle rendit cette visite à ladi Jeanne Douglas. De-  
 “ pose, qu'elle apperçut dans cette visite, que ladi Jeanne  
 “ Douglas étoit fort changée, & avoit le visage fort tiré; & qu'elle  
 “ deposante, ne sçachant pas qu'elle fut mariée, n'avoit pas la  
 “ moindre idée, qu'elle fut grosse; mais crut qu'elle avoit été in-  
 — 35. G. commodée. Depose, que lors de cette même visite la demoi-  
 — 35. E. selle Hewit parla en particulier à la deposante dans un autre  
 “ chambre, & lui demanda comment elle trouvoit miladi; la  
 “ deposante répondit, qu'elle la trouvoit changé; surquoi la de-  
 “ moiselle

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\* “ Deposes, that 'it was the very day of her return to Aix-la-Chapelle, that she made  
 “ this visit to lady Jane Douglas; that she observed at this visit that lady Jane Douglas was  
 “ very much altered, and that her face was very thin; and the deponent not knowing  
 “ that she was married, had not the least idea of her being with child, but believed that  
 “ she had been indisposed.—Deposes, that at the same visit Mrs. Hewit spoke to the depo-  
 “ nent in another room, and asked her, How she found my lady? the deponent answered,  
 “ That she found her altered; upon which Mrs. Hewit replied, That she believed it well,  
 “ as



“ *demoiselle Hewit lui repliqua, qu'elle le croyoit bien, puis-*  
 “ *elle étoit grosse ; & qu'il étoit tems de partir d'Aix-la-Chapelle,*  
 “ *parceque la grosseffe, qui étoit assez avancée, feroit éclater le*  
 “ *mariage de miladi Jeanne Douglas avec Monf. Stewart. De-*  
 “ *pose, qu'elle a continué depuis jusqu'au depart de ladi Jeanne*  
 “ *Douglas d'Aix-la-Chapelle à la voir aussi fréquemment qu'au-*  
 “ *paravant ; & qu'après que la demoiselle Hewit lui eut déclaré*  
 “ *le mariage, & la grosseffe de ladi Jeanne, comme il est di cit*  
 “ *dessus, la dite ladi Jeanne parut de plus en plus à la deposante*  
 “ *être grosse, ayant un gros ventre. Depose, qu'elle deposante*  
 “ *n'a jamais remarqué la gorge de ladi Jeanne Douglas, mais*  
 “ *seulement, que la premiere fois qu'elle la vit, cette dame avoit*  
 “ *la gorge plus enfoncée que d'ordinaire, comme cela arrive aux*  
 “ *femmes grosses au commencement des grosseffes. Depose, qu'il*  
 “ *est arrivé une fois, que Mad. Hewit a demandé à la deposante*  
 “ *une mantelet à emprunter pour ladi Jeanne Douglas pour cacher*  
 “ *la grosseur de son ventre dans une visite, que ladi Jeanne de-*  
 “ *voit faire à Mad. la comtesse de St. Severin, épouse de Monf.*  
 “ *le comte de St. Severin, ministre plenipotentiaire du Roi de*  
 “ *France au congrès d'Aix-la-Chapelle ; ajoute, que la demoiselle*  
 “ *Hewit dit à la deposante, que sans ce mantelet ladi Jeanne*  
 “ *Douglas auroit un air indecent ; & la deposante a entendu par*  
 “ *ce discours de la demoiselle Hewit, que s'étoit parceque ladi*  
 “ *Jeanne Douglas passoit pour fille. Depose d'elle-même, qu'étant*  
 “ *un jour avec ladi Jeanne Douglas, cette dame dit à la depo-*  
 “ *sante, que son mari lui avoit dit, que le soupçon de grosseffe*  
 “ *d'elle deposante étoit evanoui ; à quoi la deposante répondit en*  
 “ *plaisantant, qu'elle étoit trop vieille, & n'auroit plus d'enfans ;*  
 “ &

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“ *as she was with child ; and that it was time for her to leave Aix-la-Chapelle, because her*  
 “ *pregnancy, which was considerably advanced, would make the marriage of lady Jane with*  
 “ *Mr. Stewart public. Depos, that she continued after this, until the departure of lady*  
 “ *Jane Douglas from Aix-la-Chapelle, to see her as often as before ; and that after Mrs.*  
 “ *Hewit had informed her of lady Jane's marriage and pregnancy, she appeared to her more*  
 “ *and more to be with child, having a big belly.—Deposes, that she never observed lady*  
 “ *Jane Douglas's breasts ; but only the first time that she saw her, this lady's breasts were*  
 “ *plus enfoncée que d'ordinaire, as women's breasts are at the beginning of their preg-*  
 “ *nancy.—Deposes, that Mrs. Hewit once borrowed a cloak from the deponent for lady*  
 “ *Jane Douglas, to conceal the bulk of her belly in a visit, which lady Jane was about*  
 “ *to make to the countess of St. Severin, wife to the count of St. Severin, minister plenipo-*  
 “ *tentiary from the king of France to the congress at Aix-la-Chapelle ; that Mrs. Hewit*  
 “ *told the deponent, that without this cloak lady Jane would make an indecent appearance ;*  
 “ *by which the deponent understood, that it was because lady Jane passed for an unmarried*  
 “ *woman.—Deposes of her own accord, that being one day with lady Jane Douglas, she*  
 “ *said to the deponent, that her husband had told her, that his suspicion of the deponent's*  
 “ *being with child was vanished ; to which the deponent answered in joke, that she was too*  
 “ *old,*

“ & ladi Jeanne repliqua, en faifant un geste des mains, Regardez  
 “ moi ; & n'en dit davantage : & par là, la depofante entendit,  
 “ que ladi Jeanne Douglas vouloit parler de fa groffeffe, & mar-  
 “ quer qu'elle étoit plus agée que la depofante.”

Mem. pt. 2.  
 P. 24.

Mad. Negrette is fingle in her remark on lady Jane's breasts ; her honour is altogether above fufpicion ; and accuracy in every flight circumftance is not to be expected from any witnefs. Let us hear the purfuers memorialift. Firft he fays, Mrs. Hewit told Mad. Negrette, that lady Jane was with child, before ſhe obſerved her ladyſhip's breasts. The old prepoſition *lors de* will not admit of this ſenſe. Secondly he fays, that this remark on the hollownefs of lady Jane's breaſt ſhews the falſhood of Mrs. Hewit and Iſabel Walker, who aſſert, that *before they left Aix*, lady Jane's breasts were remarkably big ; as if a woman might not have her gorge enfoncée in March, and her breasts big the 21ſt of May following. This is a pretty juſt example of the general licence, which the purſuers take to raiſe up contradictions, when they want them.

## S E C T. VI.

### *Of Lady Jane's person in April 1748.*

D P. 2. B.  
 — 3. B.

— 5. E.  
 — 5. F.

— 5.

AT the end of March 1748 lady Jane was again obliged to change her lodgings. As the ſeaſon of the waters advanced ſeveral perſons offered Mad. Scholl “ un prix beaucoup plus con-  
 “ ſiderable ” for her rooms, which lady Jane did not chooſe to pay, and therefore removed to a maifon bourgeoife belonging to the widow Gilleſſen. She ſtill kept her maiden name, and was not known as the wife of Mr. Stewart. Mad. Gilleſſen was an ordinary woman, and never admitted into lady Jane's apartment ; ſo that we cannot expect much information from her. She received the firſt notice of the marriage and pregnancy from Mademoiſelle Bleyenheufft, who came to alter lady Jane's cloaths, and who told her, that lady Jane was married to Mr. Stewart, and that ſhe was with child. She depofes, “ Qu'après cette converſation elle

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“ old, and would have no more children ; upon which lady Jane replied, making a ſign  
 “ with her hands, *Look at me*, and ſaid no more of it ; and by this the deponent underſtood,  
 “ that lady Jane Douglas meant to ſpeak of her own pregnancy, and to obſerve that ſhe  
 “ was older than the deponent.”

“ depofante



“ depofante remarqua par la demarche de ladi Jeanne Douglas en  
 “ descendant l’efcallier pour aller faire une vifite chez une amie,  
 “ qu’elle étoit enceinte, attendu que la dite ladi Jeanne Douglas  
 “ defcendoit lentement & avec peine, & qu’elle avoit le vifage  
 “ pâle ; mais la depofante n’a point remarqué autre chofe, la dite  
 “ dame ayant un grand panier de baleine & un mantelet\*.”

D. P. 7. D.

This is all we could expect her to obferve in this houfe. Mrs. Hewit lay in the fame room with lady Jane ; and her ladyship was obliged to ufe a ftool to get in and out of bed, as ſhe had done for ſome time in the laſt houfe where ſhe lodged.

Serv. p. 18. F.  
 P. P. 50. B.

## S E C T. VII.

### *Of the Notification of the Marriage and Pregnancy to the Duke of Douglas.*

**I**T is now time to ſpeak of the late lord Crawford. He was very early acquainted with the pregnancy ; and, if Ifabel Walker may be credited, found it out by his own obſervation. — 52. B. She depofes, “ that lord Crawford came into fir John’s room,  
 “ and ſaid in her hearing, You need be under no concern, John,  
 “ for lady Jane, for ſhe is with child ; and I have very good ſkill.  
 “ This happened pretty early in the pregnancy, at the time lady  
 “ Jane was ſick, and had fits of vomiting, and looked very ill.” Min. 5. D.  
 As this circumſtance muſt have happened during their reſidence at Mad. Tewiſ’s, it ought to have been mentioned ſooner. But as the purſuers affect not to believe Ifabel Walker, except when ſhe ſpeaks as they wiſh, it became needleſs to mention lord Crawford more than once ; and in this place, he is not mentioned as an early witneſs, but as a ſure one. Lord Lindores heard him D. P. 372. A.  
 ſpeak with the utmoſt confidence of lady Jane’s pregnancy in ſpring 1748, before the congreſs at Aix began.

But the cleareſt proof of his conviction in this matter is his let- D. P. 963.  
 ter to the duke of Douglas, a copy of which is now in proceſs. At the beginning of April it was thought impoſſible to conceal the marriage any longer. It became neceſſary to inform the duke of Douglas of it. Lord Crawford generouſly undertook to do it. He wrote in very ſtrong terms to the duke ; and incloſed therein — 964. C.

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\* “ That after this converſation ſhe obſerved by the manner of lady Jane’s walking in  
 “ coming down the ſtairs, when going to viſit a friend, that ſhe was with child, as the ſaid lady  
 “ Jane Douglas went down ſlowly and with difficulty, and that her countenance was pale ;  
 “ but the deponent did not obſerve any thing elſe, as ſhe had on a great whalebone hoop  
 “ and a cloak.”

a letter from lady Jane. Her letter bears date April the 10th, which lord Crawford probably took with him, when he went to the camp at Ruremond; from which place he wrote his letter to the duke, a copy whereof he sent back to lady Jane, enclosed in one to sir John Stewart, dated the 20th of April. In this letter he expresses his firm belief of the pregnancy, as well as his high opinion of lady Jane, and sir John; and requests the duke in the strongest manner to be reconciled to the marriage, the more especially "as there were such visible hopes of its being attended with the natural consequences so much longed for by all, that are fond of seeing the family of Douglas multiply." The duke received lady Jane's letter, but never answered it. It is not certain, that he expressed any resentment: he had probably heard of the marriage long before.

Before the end of April lady Jane had occasion to enlarge her cloaths a second time. The first time is without a date: but this second enlargement is dated in Mademois. Bleyenheufft's bill 25th of April, and agrees with Mad. Gilleffen's evidence, and with what Isabel Walker says, that in the seventh month lady Jane quitted her stays, and caused jumps to be made. The third enlarging was on May the 21st.

The pursuers have introduced as a witness one Busch, who worked under Mr. Imhoff the uncle of Mademois. Bleyenheufft. He confirms what she had said in her declaration, (for she was dead before this process began) but adds, that his master Imhoff since deceased and himself gave notorial declarations. At the same time, these declarations are not found; and the pursuers insinuate that the defender's people had smuggled them. They can give no reason for this imputation. He says his present oath is conformable to his declaration; and certainly confirms Mademois. Bleyenheufft's. He shews indeed, that from that girl's description of what she saw at lady Jane's, she could form only a very imperfect idea of her pregnancy; and indeed she says not one word about it. He observes, that Mr. Imhoff's declaration and his own were in German; which is probably the reason why they were neglected or lost. The pursuers observe, that widening of cloaths is no proof of a real pregnancy. It is certainly no proof: but as ladies are usually obliged to widen their cloaths on such occasions, it became proper for the defendant to mention it, and relieve the pursuers from the trouble of dressing out a presumptive argument, with which we should certainly have been treated, if the cloaths had not been widened.



S E C T. VIII.

*Of Lady Jane's person to the 21st of May 1748.*

ON the 5th of May there arrived at Aix no less than four persons, who have since appeared as witnesses in this cause: Mr Fullerton of Dudwick, who escorted lady Wigton, Miss Primrose, and my lady's woman Mrs. Greig. P.P. 464. H.

That Mr. Fullerton came with lady Wigton, is proved by a letter from lady Jane to Mr. Haldane. He was eighty-six when he gave his testimony; and deposes, "that in March or April 1748 he was a week at Aix; saw lady Jane three or four times, but always in a croud of company at her own lodgings." In this he is mistaken, for her own lodgings would not hold a croud of company, and she scarcely received any body. He goes on, "That it did not enter into his head to imagine she was with child, nor was there any conversation on that matter, being a subject more proper for ladies than gentlemen." He is afterwards asked, "Whether lady Jane was dressed so as to conceal her pregnancy, or to make a shew or ostentation of it; to which he answers, that lady Jane was dressed in her usual manner, looked very well, and, as he thought, fuller, that is, more plump and jolly." This answer is strangely indeterminate in a case of pregnancy. As the question is about dress, and concealing of it, one would be apt to apply this jolly and plump to lady Jane's body. In this case Mr. Fullerton's testimony is confirmed by the other witnesses. The pursuers to be sure apply it to her face; in which case this gentleman is contradicted by every witness, who observed her looks at this time. — 539. F. D. P. 380. B. — 8. A. — 380. D.

Lady Wigton died before this process began. She was examined on the service, and deposes, "that when she came to Aix, she was told by Mrs. Hewit, that lady Jane was with child; and that she made no observations on lady Jane's person, not doubting the truth of her being with child, it being generally reported in the place by all her acquaintance, that she was so." Serv. 27. A.

It should be observed, that lady Wigton was only examined on the service; at a time too, when she was sick, and confined to her house; so that her deposition was taken by commission: this might contribute to render her testimony too general and inexplicit. Her ladyship indeed once knew a great deal more, than she has recollected in her deposition, if credit may be given to a very respectable witness, Mr. Gordon of Cowbardy. This gentleman — 14. F. D. P. 375. F.

D.P. 376. g. tleman never saw lady Jane during her pregnancy. He came to Aix soon after she had left it; and deposes, " That upon his arrival he immediately waited on lady Wigton, when at first meeting the conversation turned on lady Jane's being with child; and lady Wigton described her sickness and other symptoms in such a natural manner, that the deponent had no reason to doubt of her being with child." If lady Wigton did not do this from her own observation, it is clear she had been very rationally convinced of this pregnancy by those, who had observed it.

— 353. A. General Macelligot, who was then lady Wigton's admirer, and soon after her husband, says, " that he is convinced, that lady Wigton had not the least doubt about lady Jane's being with child; the more so, as she, lady Wigton, confided this as a secret to him, not knowing that he was previously acquainted with it."

— 357. D. Miss Primrose was only about fifteen years old in the year 1748. She deposes, " that, before she had been told that sir John Stewart and lady Jane were married, she was once sent by lady Wigton to lady Jane; that one of lady Jane's maids took her into the room, where lady Jane was putting on her stays, and lady Jane seemed to be displeased at the deponent's being then brought into the room; and as she had before heard it whispered, that lady Jane was with child, she observed lady Jane's person the more curiously; and lady Jane did appear to be with child at that time from her bulk and appearance, but did not take particular notice of her breasts: that after this lady Wigton told her, lady Jane was married and with child; and she afterwards heard it spoke of by Mrs. Tewis, and many others." She was not a judge how far she was gone in her pregnancy.

The youth of this witness, and her subsequent attachment to the dutchess of Douglas are points not forgotten by the pursuers. It is probable, she may in other parts of her evidence have fallen into a few mistakes, and related at the end of sixteen years what she only heard from others, instead of what she observed herself; but in this instance there seems no reason to suspect, that she has related more than she really saw: or we may balance her youth against Mr. Fullerton's age, and set them both aside; for the weight of their testimony is a very trifle to either party.

Serv. 16. c. Mrs. Greig was a witness on the service. She there deposes, " that lady Jane had all the appearances of a woman with child, and



“ and particularly her face had that appearance, insomuch that  
 “ no body but one blind could have doubted her being with  
 “ child.” Being again called in this process, she says, “ that P. P. 343. D.  
 “ lady Jane had all manner of appearance of a woman with child,  
 “ as formerly deponed on; and the deponent had no manner of  
 “ doubt of her being with child, and was indeed perfectly con-  
 “ vinced and satisfied that she was so.

The pursuers find a remarkable contrast between these four  
 witnesses. Perhaps a disinterested person would see only just so  
 much difference, as to know they were not in concert. They Serv. 27. A.  
 all, except Mr. Fullerton, who staid a week at Aix, depose, that 16. D.  
 lady Jane’s pregnancy was the frequent subject of conversation; D. P. 358. A.  
 and every one answers for the rest, that they all believed lady Jane  
 was with child.

Before we quit Aix, we must review what the witnesses, who  
 have seen lady Jane from the beginning of the pregnancy, say of  
 her appearance at that time.

Mrs. Hewit says, that both her belly and breasts, particularly Serv. 11. C.  
 her breasts, were so remarkably big, that most people thought  
 she was with twins.

The following words in Isabel Walker’s deposition seem to ap- — 18. F.  
 ply to this time: “ She says, that lady Jane was uncommonly  
 “ big; and that, from the appearance of her belly and breasts,  
 “ which the deponent had so frequent occasion to see, it was im-  
 “ possible for her to have been deceived or mistaken in the con-  
 “ dition of lady Jane: that lady Jane was naturally flat-breasted,  
 “ and very thin; but when with child her breasts rose to a great  
 “ size.”—And again, “ That she had frequent occasion to see P. P. 50. E.  
 “ lady Jane’s naked breasts and belly, both before leaving Aix  
 “ and after they came to Rheims; and that the deponent has  
 “ had her hands on lady Jane’s naked belly, and found her with  
 “ live child; and that this she would depose, if she were going  
 “ to step into eternity, whatever wretches may say to the con-  
 “ trary: that it was not upon her naked belly that she felt, when Min. 3. 16.  
 “ she found the child move, but upon her shift, as she thinks.

“ That the other maid Effy Caw, if she was alive, would swear P. P. 50. F.  
 “ to the same purpose as the deponent.”

Mad. Negrette deposes, “ Que ladi Jeanne parut de plus en D. P. 35. F.  
 “ plus à la deposante être grosse, ayant gros ventre.” This lady

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\* “ That lady Jane appeared more and more to the deponent to be with child, having a  
 “ big belly.”

was much with lady Jane from the middle of the sixth to the middle of the eighth month of her pregnancy, when she left Aix.

D. P. 8. F. Mad. Tewis, a Franciscan nun of the convent of Mariendall, daughter to Mad. Tewis, was never trusted with the secret of lady Jane's marriage. She deposes, \* “ Que dans les visites, “ que lady Jeanne a faites à la deposante, elle deposante a remarqué, “ que la dite dame avoit tout à fait la ressemblance d'une femme “ enceinte, et que dans la dernière elle avoit l'air d'une femme “ prête à accoucher. Mais la deposante, ne la sachant pas mariée, “ n'a point donné place à cette pensée, mais a cru qu'elle étoit “ hydropique.”

— 6. B. Mad Gilleffen says, that Mad. Tewis paid an early visit to lady Jane on the day of her departure. Mad. Tewis herself has declared, † “ Qu'ils sont partis le 22 Mai 1748, jour auquel de “ bon matin Mad. La Comparante voulant prendre congé de “ miladi, & entrant dans sa chambre à l'imprevue, elle avoit “ trouvée miladi en chemise en sortant du lit, et observée sa grosse “ fesse si extraordinaire, qu'elle en étoit étonnée.”

This declaration of Mad. Tewis was taken before a notary at the request of lady Jane the 6th of August 1750; and as Mad. Tewis died before this process began, it has been thought proper to examine witnesses to her conversations. The witnesses here are two gentlemen of rank and honour, sir George Colquhoun, and colonel Robert Douglas, who deserve the greater credit, as what they relate is not an accidental conversation, but what they learnt from Mad. Tewis in 1750, when they visited her with a professed intention to learn the particulars.

— 29. E. Sir George Colquhoun deposes, “ that in the first conversation “ he had with Mad. Tewis, she told him, that during lady Jane's “ stay in her house she, Mad. Tewis, being frequently with her “ of a morning, observing her to have the disorders which wo- “ men are subject to when with child, she prescribed to her “ such things as she had found useful to herself in that condition : “ —that when lady Jane left Aix, she appeared to be within six

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\* “ That in the visits, which lady Jane made to the deponent, she observed, that the “ said lady had quite the appearance of a woman with child; and that in the last visit she “ had the appearance of a woman ready to be brought to bed; but the deponent not “ knowing that she was married, did not give way to the thought, but believed that she “ was dropical.”

† That they went away the 22d of May 1748, on which day early in the morning she went to take leave of lady Jane; and going into her room unexpectedly, she found my lady in her shift, rising out of bed, and observed her pregnancy so extraordinary, that she was surprised at it.”



“ weeks or two months of her delivery ; and that she, Mrs.  
 “ Tewis, was mostly at lady Jane’s bed-side of a morning, and  
 “ frequently had put her hand upon lady Jane’s belly, and found  
 “ the child or children move ; and Mrs. Tewis adds, that she  
 “ safely could, and was resolved she would, give her oath, that D. P. 30. A.  
 “ if ever she herself or any other woman was with child, lady — 31. A.  
 “ Jane was with child, when at Aix : that some days after he  
 “ returned to Mad. Tewis with colonel Douglas.”

Colonel Douglas deposes, “ that at this conversation Mad.  
 “ Tewis said, that she had often sat at lady Jane’s bed-side of a — 33. F.  
 “ morning, and had put her hand upon her belly, and found  
 “ life ; which the deponent understood to be, that she had found  
 “ the child move in her belly ; the expression she made use of  
 “ being, *Qu’elle avoit senti la vie.*”

The countess of Bassévitz, with whom lady Jane had contracted  
 a very great intimacy when at Aix-la-Chapelle, happened to be  
 at that place about the same time with Sir George Colquhoun and  
 colonel Douglas. In a letter to lady Jane dated the 6th of March  
 1751, she says, “ I have often visited Mad. Tewis, to hear her repeat Serv. p. 73. B.  
 “ all that she knew concerning you. She is a very good woman, and  
 “ is the more sincerely attached to you, as she believes you to be an  
 “ intimate friend of her daughter, the lady of colonel Herbert. The  
 “ evidence, which she says she is in condition to produce in sup-  
 “ port of your pregnancy, is more than sufficient to frustrate  
 “ whatever the blackest malice of your enemies might invent to  
 “ the prejudice of your dear twins ; especially, if she takes my  
 “ advice, and delivers her testimony before a notary, in order to  
 “ give it the force of an authentick deposition.”

The pursuers have found no other way of removing these strong  
 assertions, but by treating the character of this respectable wit-  
 ness with the most unjustifiable abuse. They say, that she can-  
 not be believed in asserting, that she touched lady Jane’s belly  
 frequently, (which word is nothing but a slight inaccuracy of  
 sir George Colquhoun) and that she artfully concealed from these  
 gentlemen and from the public, that lady Jane lodged in other  
 houses than in her’s. This charge is groundless, as the conceal-  
 ment itself was useless and impracticable. They have themselves  
 printed Lady Jane’s letter, in which she requests Mrs. Tewis to  
 give the declaration. In this letter, (which is not printed in its  
 place, p. 73, but at 1053) Lady Jane asks her to send a declaration  
 “ \* touchant ma situation tant chez vous, qu’ après, quand j’étois

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“ \* With respect to my situation, as well when in your house as afterwards, when I was  
 “ obliged to live elsewhere, to give place to the plenipotentiary.”



“ obligée de loger ailleurs pour faire place à Monf. le Plenipoten-  
 “ tiaire.”

What motive could she have to suppress a circumstance, which was acknowledged by the parties whom she meant to serve? What reason could she have for enlarging her declaration with circumstances, which were acknowledged to be known?

There is some very particular reasoning in Almon's book, p. 100, on the subject of the pregnancy at Aix. The speaker (*a*) is said to have asked, “ If they wanted fully to affirm the pregnancy by the  
 “ best evidence that could be expected, why apply only to Mad.  
 “ Tewis, who was their first landlady at Aix-la-Chapelle, and whose  
 “ house they left as early as the 5th of January 1748, when they  
 “ had Mad. Scholl and Mad. Gilleffen; with the last of whom  
 “ particularly, they lodged till 21st of May 1748, that they set  
 “ out for Paris; and to whom therefore, the symptoms of preg-  
 “ nancy, and more particularly the bulk of lady Jane, must have  
 “ been more apparent than they possibly could have been to Mad.  
 “ Tewis?” This would lead us to believe, that Mesdames Scholl and Gilleffen spoke against the pregnancy, and that Mad. Tewis certified only to 5th January 1748; all which is in direct defiance to the testimony of these three witnesses who are quoted.— Mesdames Scholl and Gilleffen depose distinctly for the pregnancy (which they firmly believe) as far as they had means of knowing it. Mad. Tewis was questioned with sincerity in preference to them, because she knew the most; and she has attested her certain knowledge of the pregnancy from November 1747, to the 21st of May 1748.

Another speaker in the same book p. 275 (*b*) is made to say, “ If I  
 “ could find out a real bulk, when seen without her cloaths, it  
 “ would go far to instruct the defender's plea.” One would think he might have found it in Mad. Tewis's declaration; but then he adds, “ that Mad. Tewis appears to have declared things which  
 “ could not possibly exist at so *fallible* a stage of the pregnancy;” which is plainly the old stuff in the former page new vamped. He then adds, “ It is my opinion, that having been drawn in to  
 “ express herself too strongly upon this point to sir George  
 “ Colquhoun and colonel Douglas, she was thereby obliged to  
 “ repeat the same afterwards in her judicial declaration.” It happens unluckily, that her declaration was signed the day before she ever saw colonel Douglas. It is true, that sir George Colquhoun had seen her for the first time some days before colonel Douglas;

D. P. 33. n.

(*a*) Lord President.

(*b*) Lord Kennet.

but



but then some days were required to prepare a notorial declaration, to which three persons were to concur, one of whom lived ten leagues from Aix ; and whoever has the pleasure to know sir George, will think him the last man in the world to engage a lady to act dishonourably at the first visit. No body has puzzled the pursuers agents more than Mad. Tewis. Mr. Anderson has made free with the gentleman last quoted (a) to screen his contradictions : at page 341, after he had excepted to Mad. Tewis's declaration, as incompetent for want of an oath, he is made to ground himself on a slight expression in sir George Colquhoun's deposition, to raise her private conversation above both a declaration and an oath, and to declare he could have paid little regard to her testimony, because she has said things which are incredible. Though Mad. Tewis is a woman of no credit here, yet at page 345 we are told, that she did really believe lady Jane to be with child; and this conviction of Mad. Tewis is made the ground of some fresh reflections on the conduct of lady Jane. And it is clear from the countess of Bassevitz's letter, and her advice to Mad. Tewis to give her declaration before a notary, that what she told her was before she saw either sir George Colquhoun or colonel Douglas ; and the circumstance of her early visit to lady Jane, when she saw her in her shift on the 21st of May, is confirmed by Mad. Gilleffen, in whose house she then lived.

Till the writer of these papers had turned to these strange passages, to which he knows not how to affix a name, he did not think it necessary to mention, that it is in proof, that Mad. Tewis had from the very first held the same language in her family to her children. The deposition of Mad. Marie Therese Tewis, the Franciscan, is particular. She never went out of her cloister, and had never been trusted with the secret of lady Jane's marriage till D.P. 9. after the delivery, which gave fresh occasion to speak of lady Jane : she deposes, “ \* Qu'elle se souvient de s'être entretenue  
 “ quelque fois avec Mad. sa mere au sujet de la grossesse & de  
 “ l'accouchement de ladi Jeanne, depuis que la dame Tewis en  
 “ eut fait part à la deposante ; que la dame sa mere n'a jamais  
 “ doutée de la grossesse ni de l'accouchement de ladi Jeanne,  
 “ parceque elle en étoit bien informée, qu'elle en avoit con-

(a) Lord Kennet.

“ noissance.”

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\* “ That she remembers to have talked sometimes with her mother about lady Jane Douglas's pregnancy and delivery, after her mother had communicated it to her ; that her mother never doubted of the pregnancy, nor of the delivery of lady Jane, because she was  
 “ well  
 X



D. P. 24. E.

“noissance.”—Francis Tewis her son depose, “Que la dame  
 “Tewis, mere du depofant, ne lui a jamais dit, qu’elle eut au-  
 “cune doute fur la groffeffe & fur l’accouchement de ladi  
 “Jeanne Douglas, mais qu’au contraire elle a toujours per-  
 “fifté à dire à depofant, qu’elle ne doutoit pas de la groffeffe,  
 “ni de l’accouchement.”—And Mrs. Herbert alfo, daughter to

D. P. 1006. G.

Mad. Tewis, and widow of the hon. colonel Herbert, in her let-  
 ter to the duchefs of Douglas, fays, “I cannot recollect what is  
 “become of my mother’s letter, (the letter inclofing the noto-  
 “rial declaration) but am pofitive her expreffions were very ftrong,  
 “that lady Jane was certainly with child at the time fhe men-  
 “tioned; fome mention was made of a midwife; whether her  
 “exprefion was, as pofitive of it as the beft midwife at Aix  
 “could be of it, or, that fhe was as pofitive of it as the midwife  
 “herfelf was, as I have not feen this letter of late, I cannot po-  
 “fitively charge my memory which of the two it was; from  
 “her own experience, and the opportunity lady Jane had given  
 “her of feeing her naked in bed with only her fhift on, fhe  
 “might fay fhe was as certain of it as the beft midwife there  
 “could be; having had fo many children herfelf, and feen du-  
 “bious cafes of that nature, one in particular of her own daugh-  
 “ter, who afterwards died in child-bed: I think had my mother  
 “been in the leaft doubt of it, fhe would have mentioned it as it  
 “appeared; and as fhe mentioned it fo ftrongly, I am pofitive  
 “from the beft of my remembrance of all fhe ever wrote to  
 “me about it, fhe pofitively thought her to be with quick child.”

## S E C T. IX.

*Of the Motives of the Family for leaving Aix.*

**I**T is to be obferved here, that lady Jane’s marriage and  
 pregnancy were communicated to Mr. Douglas of Edring-  
 ton, and to Mr. Walter Colvil, before fhe left Aix: and thus  
 we might hope to take our leave of this imperial city; but the  
 purfuers logic is clofe at the heels of this unhappy family through-  
 out. They affert, that the appearances of lady Jane’s pregnancy  
 were affumed all at once, when fhe pretended to be five months  
 gone with child; that as her refolution from the beginning was  
 to go to Paris, where alone fhe could expect to procure the chil-

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“well informed and had knowledge of it.”—François Tewis, her fon, depofes, “That the  
 “deponent’s mother never faid to him, that fhe had any doubt of the pregnancy or delivery  
 “of lady Jane; but on the contrary fhe always perfifted in faying, that fhe had no doubt of  
 “the pregnancy or delivery.”



dren of other people to substitute in place of her own, her pregnancy kept pace with the negotiations then going on at Aix for a general peace; and accordingly she set out for Paris the moment that travelling into that country was permitted to the English.

As to this, in the first place, it has been shewn from the declaration of Mad. Tewis, the depositions of the maids and others, that the pregnancy was observed from the month of November 1747, when there could be no prospect of her being allowed to go into France. Nay, it is very remarkable, that at the very time her ladyship wrote to the duke of Douglas, informing him of her marriage and pregnancy, there was not the least appearance of a peace, or of her being allowed to go into France. Lord Crawford, in his letter to the duke of Douglas dated the 20th of April 1748, inclosing lady Jane's to the duke, writes thus: "As your grace  
" may perhaps incline to know how things are likely to turn out  
" here, I shall venture to add, that I am afraid the enemy will  
" have made too great progress upon Maestricht, before we by  
" the junction of our troops and recruits become formidable  
" enough to interrupt their progress in their attempt upon Maef-  
" tricht; but I hope we shall be able to frustrate all their other  
" designs, and perhaps to thrash them before the end of the cam-  
" paign."—So that at this time, when the pregnancy had been universally observed by every person, and when it was communicated to the duke of Douglas, there certainly could be no prospect of their getting to Paris: and it appears from Lord Crawford's letter to sir John Stewart, that at this time they had resolved to leave Aix, and had applied to his lordship to procure them a pass to go to Geneva. D. P. 965. A.

Again, the pursuers alledge, that sir John and lady Jane gave four reasons for leaving Aix, which are affected, or absurd. Mem. pt. 2. p. 56.  
1st, Want of the exercise of the Protestant religion. — 2d, Want of better assistance in her delivery. — 3d, Left her marriage should be known to her brother. — And 4th, The expensiveness of the place.

The first of these motives shall be considered hereafter. The second depends on the testimony of two ladies of fashion; one is lady Wigton, who deposes, "that she apprehended, and heard  
" it said." She does not say, from whom she heard it, nor does she know; and there is no proof that lady Jane or sir John ever said so. Serv. 27. c.



D. P. 37. F.

The other lady is Mad. Negrette, who says, “*Que la demoiselle Hewit lui a dit, que ladi Jeanne devoit aller à Rheims, ou à Montpellier ; ne se rappelle point précisément laquelle de ces deux villes fut nommée par la demoiselle Hewit ; croit plutot, que ce fut Montpellier, parceque la demoiselle Hewit dit à la depofante, que c’étoit une ville, où il y avoit des accoucheurs, & où la chirurgie étoit plus en vogue.*” In this passage there is not one syllable about better assistance ; only that Mrs. Hewit said to her, that she heard there was good assistance at the place to which they intended to go. For the rest, one cannot think Mad. Negrette is very accurate, when she makes Mrs. Hewit talk of Montpellier, a place she probably never heard of in her whole life.

Mem. p. 58.

The third motive, viz. Lest her marriage should be known to her brother, which the pursuers assign to lady Jane, is equally groundless with the foregoing. They quote nothing in support of what they say ; but it is supposed that a part of colonel Douglas’s deposition is to stand for proof. He says, that Mrs. Tewis was asked, why lady Jane concealed her marriage ; and that she answered, that she had often asked lady Jane the same question, who always answered, that her reason was, she was afraid thereby of losing her brother’s favour, and that he might withdraw the pension. This most certainly was the true reason of lady Jane’s concealing her marriage, and applied to any time after lady Jane’s arrival at Aix till the 10th of April, when she wrote to her brother, informing him of the marriage and pregnancy. The answer to the next question, why, being married, she did not choose to own her being with child, is as true : that as she had always concealed her marriage, she was unwilling, and indeed unable, on account of the inconveniency of her lodgings, to receive the congratulations of the many people of fashion then there ; and that the little money she had, made her unwilling to stay at Aix on account of the expences of her delivery.

D. P. 34. E.

When lady Jane removed to Mad. Gilleffen’s, she found herself in a burgher’s house, in mean and strait apartments, where she could receive no company, and where she was ashamed to expose her rank in the sight of all those persons of high quality, who were assembled to the congress ; and she could afford no better. Every witness examined is ready to confirm what Mrs. Hewit and Isabel Walker have said about the high price of lodgings and provisions.

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\* “ That Mrs. Hewit told her, that lady Jane was to go to Rheims, or to Montpellier ; she does not recollect precisely which of these two towns were mentioned by Mrs. Hewit ; believes rather, that it was Montpellier, because Mrs. Hewit said to her, it was a place, where there were accoucheurs, and where surgery was more in vogue.”



## S E C T. X.

*Of Sir John Stewart's design to go to Geneva.*

T H E R E is so far from any plot between them to secrete themselves at Paris, or elsewhere, as the pursuers contend, that there is plain proof, that sir John and lady Jane were at this time very far from agreeing in their sentiments; that while sir John was planning a journey to Geneva, which took place in part, lady Jane was listening to every other proposal, and at last acted out of submission to her husband, not out of real approbation of his scheme. From the letters, which pass between lord Crawford and sir John Stewart in April and May 1748, after his lordship left Aix, it is clear, that before he left that place about April 10, sir John and lady Jane had mentioned to him their resolution of going to Geneva; and that he approved of it, and agreed to send some servants and horses along with them to the end of their journey, which were afterwards to proceed to Milan to lord Garnock, his lordship's relation. Had not the journey been delayed by the difficulty of procuring passes, the bad weather, and other accidents, there would have been no hurry or confusion. It appears too, that the name of Stewart was at this time in such disrepute in France, that the very mention of it would have been sufficient to stop the passes being given.

In sir John's first letter to lord Crawford, he says, "I happened P.P. 561. K.  
 " to meet Mr. Montague this day, and was talking to him of — 562. A.  
 " the pass for L. J.—Marshal Saxe must give the pass for what  
 " part of France we shall have to go through. My lady begs you  
 " would procure her one, but it must be in my name for a fa-  
 " mily."—In a second letter dated only the 17th April, and before — 563. C.  
 they had received any letter from lord Crawford, he writes,  
 " We reckon to set out to-morrow se'nnight, but must necessarily  
 " hear from you first, &c. and further, I should be glad to know,  
 " if you continue the resolution of sending the running footman  
 " and horses to Italy along with us."

By the first of these letters it appears, that lord Crawford was privy to sir John's design before he left Aix, otherwise he could not provide the passes, as no mention is made of the part of France they intended to go through. By the second it appears, his intention lay towards Italy, and that lord Crawford had mentioned to them, before his departure, his design of sending the horses and servants along with them.

Sir

- P.P. 564. z. Sir John pressed lord Crawford for the passes in a third letter. His lordship answers them all in a letter of the 20th of April.
- 565. c. He recommends to lady Jane to procure passes in her own name from field-marshal Bathiani; and adds, “Should I mention the  
“ name you intend to go by, and your going through France, I  
“ know it would be sufficient to stop its being given.” He  
says, “I have sent the footman I promised with two horses:  
“ you will make use of them to the end of your journey, and then  
“ let them proceed on their journey to Milan to join lord Gar-  
— 565. f. “nock.” And in two subsequent parts of this letter it is said,  
that sir John intended to go to Geneva; which shews clearly, that  
this place had been mentioned between them, before lord Crawford  
left Aix.

- In lord Crawford's letter of the 20th of April, the affair of the pass  
is left wholly indeterminate; yet in sir John's answer of the 24th,  
— 567. c. he returns thanks for the passes. In this letter sir John says, “That  
— 566. d. “he and L. J. are made happy by the servant and horses being to  
“ make the journey with them; the more especially, that her  
“ only footman happened to be a French deserter, and could not  
“ go with her; and that the servant and horses should be well  
“ taken care of; and says, that he waits only for better roads and  
“ more favourable weather to pursue his journey into Switzer-  
“ land.” And towards the end of the letter he says, “In case  
“ lord Garnock sends the famous watch from Vienna, it will  
“ probably come by some of count Caunitz's messengers; in  
“ which event I should think, if your lordship sends word to  
“ him, it might be put into Florentin's hands to be brought to  
“ me in October, when he comes into Burgundy.” And in ano-  
— 569. k. “ther letter the 12th of May, he says, “Lady Jane sets out for Pais  
“ de Veau Thursday next.”

- Sir John Stewart also, in a letter to Mr. Robertson at Rotter-  
— 601. z. dam, without date, but wrote about the 1st of May, asks him, if  
he had, or could procure, a correspondence with Geneva; which  
shews farther his intention of going there.

Very soon after this, sir John seems to have conceived some  
doubts, that it was too late for lady Jane to undertake so long a  
journey, and that she might be obliged to stop by the way: but  
go he would.—On the 15th of May Mr. Florentin at Aix was  
engaged to write to Mr. Andrieux at Rheims, on the subject of  
lodgings at Rheims. We must take this on the credit of the pur-  
suer's memorial. Mr. Florentin's letter is not found; and though Mr.

An-



Andrieux's answer of the 22d of May is, as we are assured, in process, it is not printed; but instead of the original we are treated with a translation of one passage. By this passage it appears, that Mr. Andrieux was not told how long they would stay; whether they would have lodgings, or a house to themselves; or whether they would board as well as lodge. Mr. Florentin's enquiry was a blind one. Sir John treated it as of little consequence; for he set out from Aix, before Mr. Andrieux's answer was written. Mem. pt. 2.  
p. 61.

The pursuers memorialist observes shrewdly, that there was no hint in Mr. Florentin's letter, that lady Jane was with child, nor of her intention of going to Geneva. This observation we are to take on trust, as the letter is not printed; and it is difficult to conceive what use is to be made of it. The pursuers admit that the pregnancy was generally believed at Aix: either therefore Mr. Florentin did not think it worth mentioning, which is probable; or he artfully concealed it, and then we have one accomplice more, which no one will believe; or perhaps Mr. Florentin did not know any thing of it, as this is the first time he is mentioned as the acquaintance or agent of sir John Stewart.

Another accident happened about this time, which sir John Stewart relates in a letter to lord Crawford the 19th of May. There was a difficulty of procuring passes for the horses to go through France, and he had been assured by Mr. Chavan, that the best and safest way of sending horses to Milan to lord Garnock was through Germany. He therefore declines taking them with him, and adds, "I shall trouble my good lord with a long letter from our first halt;" and says, "Lady Jane begs you would mind your promised visit, wherever she happens to pitch her tent." And in another the next day, the 20th of May, he tells his lordship, that the young bay was sick, and unable to undergo the journey; and that they, lady Jane and himself, set out to-morrow morning for Liege. In a letter from sir John to lord Crawford, dated Rheims, 9th of June 1748, he says they arrived there yesterday. "Her (lady Jane's) liking the place, with some other reasons against fatiguing journies, have determined her making halt for some time. We flatter ourselves, if the peace goes on, with some hopes of seeing you on your way to Barege, should it be needful." P.P. 750. F.  
— 571. A.  
— 572. F.  
— 572. I.

By these letters it appears, that sir John Stewart did actually set out from Aix with an intent to go on to Geneva, according to a plan.

a plan he had formed in the beginning of April; that at the same time he had been told, that the journey was rather long in lady Jane's then situation, and was uncertain but he might stop for some time at Rheims, a town of some note in the direct coach-road to Geneva, and which they had been told was very cheap; but that it was not till they had found from experience the inconvenience of travelling, that they finally resolved to remain there till after the delivery; and that lord Crawford was privy to all this from the beginning. All this passes with the pursuers for artifice and deceit; and that sir John's private intention was to go to Paris. But had every other word in their memorial been true, it would never have prevailed on a reasonable man to believe, that sir John could have carried his hypocrisy so far, as to be so anxious with lord Crawford to procure passes for them to go to Geneva—to have borrowed his servant and horses, and suffer them to be sent to him, and to have expressed his satisfaction at their being sent, and to have undertaken to send them forward to Lord Garnock at Milan—to have pressed his lordship to send his watch by Mr. Florentin to that country; and to have wrote to his banker for a credit upon a person at Geneva, unless he had a real intention of going thither.—If there is a plot here, lord Crawford is clearly an accomplice. The pursuers had better speak out, and sacrifice one character more to the shrine of St. Ignace.

## S E C T. XI.

*Of Lady Jane's intention to lie-in privately.*

LET us now look back upon lady Jane. When this scheme was first mentioned in the beginning of April, it is probable she approved it; but the unexpected delay of getting the pass made her change her mind.

Serv. p. 26. c. Lady Wigton deposes, “ that lady Jane wrote to her from  
 “ Rheims, and both then and before leaving Aix-la-Chapelle sol-  
 “ licited the deponent to come and live at the same place with  
 “ them.” Here is a proposal made after the 5th of May to  
 settle any where with lady Wigton: it is a proof that lady Jane  
 was undetermined where to go; and there was no plot, but what  
 lady Wigton was invited to observe.

D. P. 36. c. Mad. Negrette, who came to Aix just as the lodgings were  
 changed, deposes, “ Qu'elle a dit à la demoiselle Hewit, pourquoi  
 “ miladi



“ miladi n’alloit pas faire ses couches à Bruxelles ? et que si elle  
 “ deposante s’y trouveroit dans ce tems là, elle seroit charmée de  
 “ lui rendre ses soins, et de l’avoir chez elle \*.” She adds, that  
 this was an offer of politesse : but Mrs. Hewit took it in earnest,  
 and says, that lady Jane would have gone to Brussels to be deliver-  
 ed in her house, had not that lady’s husband been called to Vienna  
 to take possession of the office of one of the ministers ; and his  
 lady was obliged to follow him. Here is a second proposition ac-  
 cepted of, equally inconsistent with the journey to Geneva, and  
 the notion of a plot to suppose children.

Serv. p. 11. B.

The next proposal shall be stated in the words of sir George Colquhoun, though the principal circumstances are mentioned by Mad. Tewis, and Mr. Joseph Tewis, grand bailiff of the count de Salme.

D. P. 16 B.

— 17. A.

Sir George Colquhoun deposes, “ that Mrs. Tewis told him,  
 “ that as the time of lady Jane’s delivery approached, she ob-  
 “ served her less chearful and more pensive than usual ; and upon  
 “ her asking the reason thereof, lady Jane told her, that the  
 “ thing, which gave her uneasiness, was the thoughts of being  
 “ delivered at Aix, and thereupon receiving the compliments of  
 “ congratulation of the people of rank residing there on account  
 “ of the congress, and to whom she had not notified her mar-  
 “ riage : upon which Mrs. Tewis told her, that in order to avoid  
 “ that difficulty, she would cause a clergyman, a relation of hers,  
 “ (Mr. Joseph Tewis) who was factor for a German nobleman,  
 “ (the count of Salme) who had a country-house some leagues  
 “ from Aix, (the castle of Bedbur) where he did not generally  
 “ reside, and who was then at some distance in another part of  
 “ Germany, to write to that nobleman for the use of his castle  
 “ to lady Jane for lying-in.” Mr. Tewis did write to count Salme, who was then at Vienna ; but the count’s permission did not arrive, till lady Jane had left Aix. Sir George proceeds, that Mad. Tewis further said, “ that upon this proposal lady Jane  
 “ appeared to be perfectly easy, and continued so for some time ;  
 “ and when Mrs. Tewis thought, there was no obstacle to her  
 “ proposal taking place, Mr. Stewart insisted, that lady Jane  
 “ should go to the south of France to be delivered. She added,  
 “ that as she was present at the consultations between lady Jane  
 “ and Mr. Stewart, she, Mrs. Tewis, remonstrated earnestly,

— 30. A.

\* “ That she said to Mrs. Hewit, Why did not lady Jane go to Brussels to lie in ? and if she, the deponent, was there at the time, she should be happy to take care of her, and to have her in her house.”

“ with tears in her eyes, against what she thought such a piece of  
 “ madness and inconsistency, as for a person of lady Jane’s rank  
 “ to undertake such a journey in the condition she then was ;  
 “ but that all she could say could not prevent Mr. Stewart’s teaz-  
 “ ing lady Jane into a compliance.”

## S E C T. XII.

*Of the journey from Aix towards Geneva.*

P.P. 533. F.

**I**T was thus, that lady Jane was hurried away from her friends by the importunate request of the husband of her choice, without any other precaution than a letter of recommendation to Mr. Andrieux of Rheims, where it was believed she might be obliged to stop ; and a letter of credit for 1979 livres 5 sols adressée à la veuve Tassin & Fils, banquiers à Paris, dated two days before she set out. Mess. Khar, who gave the credit, say, \* “ Cette dame  
 “ ne passera peut-être pas à Paris ;” from whence the pursuers candidly and grammatically conclude, she meant to go thither. But the word “ peut-être” should be in a parenthesis : it is a mere casual conjecture. The design of having credit on a great house at Paris arose plainly from the uncertainty of the time or place, in which they should want the money. This credit was negotiable everywhere in France, or at Geneva ; a credit upon a small house in a provincial town had been of use only in the neighbourhood of that particular place.

D.P. 8. c.

Serv. p. 37. c.

These three instances sufficiently shew, that lady Jane was in no plot at this time. Let it be said ever so often, that Sir John and lady Jane were in a scheme to deceive Mad. Tewis, there still remain the transactions with lord Crawford, Mad. Negrette, and lady Wigton, in which there could be no deceit, unless they were in the secret. Lady Jane’s behaviour does honour to her character, and merits the euloge, which one has given it, who knew her at this time : “ *Elle étoit fort aimable, douce comme un*  
 “ *Ange.*” Her letters to Scotland are in the same spirit. In a letter to Mr. Hamilton, minister at Douglas, dated Rheims March the 26th 1749, she writes, “ When I left Aix last summer I set  
 “ out for Switzerland upon the Lake of Geneva, where I proposed  
 “ to have found a double advantage, a cheap country, and the  
 “ free exercise of the Protestant religion ; but found I was unable  
 “ to make so long a journey in the state I was then in, so was  
 “ necessitate to stop here.” The fact, that she did set out for Switzerland, is as fully proved, as any intention can be, by fir

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\* “ Would not perhaps go to Paris.”



John's letters written at the very time. There is not one hint of a change of resolution before they set out, though there was a slight provision made, in case they should be obliged to stop at Rheims. It is plain, that lady Jane undertook the journey contrary to her judgment; and there is nothing in proof to hinder us from believing, that the religious principle, which she mentions in this letter, and those which she wrote to Mr. Haldane 6th of September 1747 and 12th of May 1748, and to lady Mary Hamilton 2d of April 1749, was a powerful motive to engage her to comply with sir John Stewart. The pursuers remind us on this occasion, that Roman catholicks frequently thought, that she was not far from them. They would do well to remember, that a good heart is at peace with all the world; and that those, who know the value of religion to their own minds, are the last to disturb the religion of their neighbours.

P. P. 537. I.  
 — 539. I.  
 — 64. K.  
 — 65. B.

One of the speakers in Almon's book is said, p. 278 (a) to have found out, that they suddenly left Aix under the pretence of the "imminent hazard of an approaching delivery." One may reasonably ask, where this person dipt for intelligence? It is in proof, that they intended to leave Aix near two months before they left it; and as there is no proof of pregnancy before the beginning of November 1747, there was no great hazard of a delivery before the end of July 1748.

Sir John Stewart, in an apology for his conduct to the dutchess of Douglas dated the 30th of January 1759, says, "Debts and my brother's unkindness made it impossible for us to sustain the expence of a family in Scotland; so we determined to go to France (which was true); there we went after taking the season of Aix and Spa" (which was true too). All that is amiss here is, that sir John neglects to mention his intention of going to Geneva, which he never executed, and which would have gained him as little credit with the dutchess, as it had formerly done with Mad. Tewis. The pursuers with the same art quote this letter in their table of contents, as a proof that sir John never intended to go to Geneva, in defiance of all the letters written at the very time, which prove that intention.

P. 6.

We have now at length done with Aix; and shewn that the defender's proof of his mother's pregnancy at this place is as full and compleat as possible; and that the pursuers have not proved a single objection to the testimony of any one of the witnesses; and that

fir John and lady Jane's conduct was open, uniform, and natural throughout, upon the supposal of lady Jane's being really with child; but inconsistent and absurd, if the appearances of pregnancy were assumed. Sir John and lady Jane (who is from hence generally called Mad. Stewart by the French witnesses) set out from Aix the 21st of May, and arrived at Liege the same evening.

P.P.\*419.\*K.  
No. 4.

D.P. 1010. A. In the Condescendance of Facts, and in the Monitoire we are told, that they dismissed their man-servant at Liege; which is  
— 7. F. false.—He left them; and the reason of his leaving them was well known by Mad. Gilleffen.—It was, because he was a French deserter, and dared not follow them into France. The widow of this servant has been found, and deposes, that sir John was so  
— 19. A. far from dismissing her husband, that sir John and lady Jane pressed him to go along with them, and afterwards wrote to him, earnestly desiring him to come after them, and offering to solicit his discharge; so that there was no plot, but what he was invited to witness. She mentions too, that her husband told her, lady Jane was with child, when she left Aix. The pretended dismissal of this servant, Pierre Quibel, was once brought by the pursuers as a strong presumptive argument of a plot.

### S E C T XIII.

#### *Of Lady Jane's person at Liege.*

THE first witnesses to the pregnancy at Liege were Mr. and Mad. Lambinon. Mr. Lambinon had been servant to lady Jane and sir John Stewart at the Hague, Utrecht, and Aix, from November 1746 to September 1747; when he left Aix, and retired to Liege, and married. When the company arrived at Liege, Mrs. Hewit paid an early visit to her old acquaintance, and told him, that lady Jane was with child, and going to Rheims to lie in; which surprised him, as it was the first news he had heard of the marriage. He and his wife waited upon lady Jane the next day, and they both observed the pregnancy. Mr. Lambinon says,  
— 43. E. “\* Qu'elle étoit grosse beaucoup, ce qu'il a jugé par la grosseur  
— 43. F. “de son ventre.”—Mad. Lambinon says, “Que sa grossesse paroît  
— 46. D. “soit extrêmement.”—They saw lady Jane but once.

Mr. Byres of Tonly was acquainted with sir John Stewart at the Hague. He now saw lady Jane frequently during her stay at

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\* “That she was very big with child, which he judged by the bulk of her belly.”—Mad. Lambinon says, “That her pregnancy appeared extremely.”



Liege; and depofes, “ That to him ſhe had the appearance of a  
 “ woman with child, and big with child. He was as much ſa- — D. P. 377. G.  
 “ tisfied of her being with child, and heavy with child, as ever he — 379. C.  
 “ was with being ſo with reſpect to any other woman. He — 378. B.  
 “ answers for the general belief of all the Britiſh perſons then  
 “ at Liege.”

Mr. Grême of Garvock ſaw lady Jane at Liege, but could make — 362. D.  
 no obſervation on her perſon on account of her looſe dreſs, and  
 that he did not look at her with that view. He afterwards heard  
 ſhe was with child, and going to lie in at ſome place in France.

The chevalier Douglas was a priſoner in Scotland in 1746, — 38. E.  
 when he became acquainted with lady Jane; he ſaw her at Liege;  
 and depofes, “ Qu’il vit ladi Jeanne avec toutes les apparences de — 39. B.  
 “ groſſeſſe, bien marquées par les traits de ſon viſage, par  
 “ l’enſleur de ſon ventre; & qu’il n’a jamais vû femme qui eut  
 “ plus les marques de groſſeſſe; qu’il y fit plus d’attention à cauſe,  
 “ que quand il vit ladi Jeanne en Ecoſſe, elle étoit d’une taille fort  
 “ mince; & comme elle étoit petite, cela faiſoit paroître plus ſa  
 “ groſſeſſe.” — The chevalier Douglas adds further, “ Que le col. — 39. C.  
 “ Stewart lui dit, qu’il alloit prendre une maiſon à Rheims; à  
 “ quoi le depoſant repondit, qu’il vaudroit mieux conduire ladi  
 “ Jeanne à Paris, où elle pourroit avoir tous les ſecours néceſſaires  
 “ pour ſon accouchement; & il dit en même tems, que cela  
 “ étoit plus neceſſaire à cauſe de l’âge avancée de miladi Jeanne;  
 “ que le colonel répondit à la propoſition ſuſdite, qu’il avoit bien  
 “ d’envie de conduire ladi Jeanne à Paris, mais qu’il craignoit,  
 “ que l’argent ne lui manquât.” This is the firſt hint in proceſs  
 of any advice or intention of going to Paris.

Mr. and Mrs. Hepburn of Keith were the perſons, with whom  
 lady Jane was the moſt intimate at Liege.

Mr. Hepburn depofes, “ That ſhe appeared to be further gone — Serv. p. 8. D.  
 “ with child, than when he ſaw her at Aix; and that ſhe en-  
 “ deavoured to conceal her bigneſs in the belly by a looſe dreſs,

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\* “ That he ſaw lady Jane with all the appearances of pregnancy, very viſible by the fea-  
 “ tures of her face, and the bulk of her belly; and that he never ſaw a woman, who had  
 “ more the appearance of being with child; that he took the more notice of it, becauſe,  
 “ when he ſaw lady Jane in Scotland, ſhe was very thin; and as ſhe was little, this made  
 “ her pregnancy the more remarkable—that colonel Stewart told him, that he was going  
 “ to take a houſe at Rheims; to which the deponent answered, it would be better to carry  
 “ lady Jane to Paris, where ſhe could have all neceſſary aſſiſtance at her delivery. And he  
 “ ſaid at the ſame time, that this was the more neceſſary on account of her advanced age.  
 “ To which propoſition the colonel answered, that he had a great inclination to carry lady  
 “ Jane to Paris, but that he was afraid he might want money.”



“ which she wore. He adds, that sir John told him, she was  
 “ going to Paris to lie in.”

Serv. p. 9. c.

Mrs. Hepburn deposes, “ That when she saw lady Jane at  
 “ Liege, she appeared *just like a clue*, with a capuchin about her,  
 “ which she commonly wore, and seemed to have no affectation  
 “ to shew or discover her being with child: that one morning  
 “ she saw lady Jane sitting upon her bed-side, without her gown,  
 “ and her waistcoat laid about her; that her breasts were quite  
 “ exposed, and that from what the deponent observed of them,  
 “ it was impossible, that any person, who saw her in that situa-  
 “ tion, could doubt of her being with child: that this was the  
 “ more observable to the deponent, that when she saw her at the  
 “ Hague, she was a thin and slender woman, in so far as that she  
 “ scarce appeared to have any breasts at all: that the deponent  
 “ came in by surprize upon lady Jane in the morning abovementioned.”—Being farther examined in this process, Mrs. Hepburn explains, by what accident she came into lady Jane's room on the morning of her departure; and adds, “ That

P. P. 339. E.

“ being one day in a coach with lady Jane, a beggar, who ap-  
 “ peared to the deponent to have his nose flat upon his face,  
 “ presented himself before the coach for charity; and to that side  
 “ of the coach where sir John and the deponent sat: that sir John  
 “ in a violent passion rushed out of the coach, and turned the  
 “ man about, left lady Jane, who with Mrs. Hewit sat on the  
 “ other side of the coach, should see him: that lady Jane asked in  
 “ a great haste, what was the matter, which the deponent told  
 “ her laughing, saying, that it was a man with a shocking as-  
 “ pect: lady Jane answered, I wonder you laugh, for I think it  
 “ is the most impious thing I ever saw in my life; and that lady  
 “ Jane appeared very angry for using the poor man so cruelly,  
 “ and chid Mr. Stewart for it when he came into the coach ex-  
 “ tremely; upon which he went out again of the coach, followed  
 “ the man, and gave him something extraordinary: and says,  
 “ that they set out from Liege for Sedan, and were going to  
 “ Rheims.”

Mr. Hepburn deposes, that his wife told him the circumstance of the beggar the night it happened; and that he understood, sir John had done this on account of lady Jane's being with child.

These evidences with respect to the pregnancy may speak for themselves. With regard to other points, it may be right to make one remark. Mr. and Mrs. Hepburn appear to have lived in such concord, that though they are for the most part examined to such  
 circum-



circumstances, as passed under the view of the person who deposed to them, yet we may reasonably presume, and know in part, that what was observed by one, was immediately known to the other.

Mr. Hepburn says, sir John Stewart told him, he was going to Paris. Mrs. Hepburn asserts, they went to Sedan. Had sir John Stewart told Mr. Hepburn that he was going to Paris, while he went secretly another way, it would have given room for suspicion of some design: but when we see, that he acts openly and ingenuously, and communicates to Mr. Hepburn the scheme of going to Paris, which had been just before suggested by the chevalier Douglas, and scarce adopted in his own mind, can we believe, that this inconsiderate man had any plot in his head, especially when we see after all, that he publicly took a different road, doubly inconvenient, both for his purse and security? If he had a secret design to execute at Paris, there is a good publick D. P. 460. E. voiture from Liege to Paris, by the way of Brussels; none to Sedan, or Rheims; and the exhibiting lady Jane at Rheims before the scheme was executed, was a certain method to render it abortive. It is plain there could be no formed design. Sir John began to feel, what all the women had felt long before, the necessity of stopping in France, till lady Jane was delivered; and proposed to stay at Rheims till after the delivery. The advice however of chevalier Douglas, and the dangers he mentioned of lady Jane's being delivered there, governed him for a day; he then resumed his old plan, and went on to Rheims in his way to Geneva.

The pursuers insist, both in their memorial, and in their table of contents prefixed to their proof, that there was a great affectation of shewing lady Jane at Liege, because it seems sir John and Mrs. Hewit invited their old friends the chevalier Douglas and Lambinon to come and see her: but this is asserted in direct contradiction to three credible witnesses, Mr. and Mrs. Hepburn, and Mr. Grême, as may be observed above. Mem. pt. 2. p. 69. Tab. p. 6.

It appears by the testimony of Mr. and Mad. Lambinon, that the maids bought lace and muslin for the child-bed-linen at Liege. D. P. 43. F. — 46. E.

Mad. Lampson, who kept the Black Eagle, where lady Jane lodged, has been examined, but remembers nothing relative to the persons of her guests. P. P. 460.

## S E C T. XIV.

*Of Lady Jane's stay at Sedan.*

P.P.\*419.\*K.  
— 339.G.

ON May the 25th lady Jane, &c. set out for Sedan. Mrs. Hepburn of Keith says, the maids went in the basket of the coach. The company was three days on the road, and arrived at Sedan on the evening of the 27th of May; rested that night at the Trois Rois, and removed to the Hart the next day. They remained in this place nine days, very probably for this reason: they arrived at Sedan on Monday the 27th of May; and as the stage-coach to Rheims set out only once a week, and on the Wednesday, they had not sufficient time to rest lady Jane, and get their luggage surveyed at the custom-house, their places taken, &c. in one day; so were obliged to stay till the next stage-coach went.

It is remarkable, that not one person of Sedan has been examined by either party in this cause, though lady Jane was there nine nights in this time, and the signs of two several inns where she lodged are marked down in her pocket-book; so that we must have recourse to Mrs. Hewit and Isabel Walker for the particulars which are known.

Serv. 19. B.

Isabel Walker says, "that the landlady at Sedan discovered lady Jane to be near her time by her great belly, and by her face." This agrees with the account of lady Jane's size, given by Mrs. Hewit, Isabel Walker, Mrs. Hepburn, and others. But the people about lady Jane's person knew how to compute her time better than a person, who had seen her for the first time only the day before this discourse was held. Isabel Walker says, lady Jane explained to her in English, what the landlady said in French.

P. P. 534. F.

It should seem, that lady Jane had written back to Mess. Khar, either from Liege or Sedan, to desire them to exchange the credit they had given her on the widow Tassin and son at Paris. For it appears by a letter in process from Mess. Khar to Mad. Tassin dated the 29th of May, that the credit was changed in favour of monsieur Le Baron de Stewart. It is probable, that sir John reflected, that lady Jane could not so well have credit in her own name, after the marriage was publickly owned. But this transaction affords no sort of evidence, that lady Jane meant to go to Paris; but the contrary.

S E C T.



S E C T. XV.

*Of Lady Jane's sickness between Sedan and Rheims.*

ON June the 5th the company set out in the publick coach for Rheims. They lay the first night at Charleville, where they were joined by Monf. Guenet. P. P. 549. r. — 549. f.

Monf. Guenet depofes, that he travelled two days with colonel Stewart and lady Jane: \* “ Que pendant ce voyage il ne s’apperçut point, que Mad. Stewart fut groffe, parcequ’il n’y fit point attention ; qu’il ne fçavoit pas même, qu’elle fut la femme de Monf. Stewart, ni fi elle étoit fille ou femme ; qu’elle portoit une longue mante, qui lui tomboit des épaules jufqu’aux pieds ; que Monf. Stewart la traitoit avec des refpects.” This perfon was going farther than Rheims. He returned thither, while fir John was at Paris, and breakfasted with the maid-servants, of whom he learned for the first time, that the younger lady was the wife of colonel Stewart, and was gone to Paris to lie-in. He returned frequently to Rheims, and made feveral vifits to Mr. and Mad. Stewart after their return from Paris ; and fays, they never fpoke to him of the pregnancy, delivery, or of the children ; but the maids told him, that Mad. Stewart had been delivered of two boys, † “ qu’il trouvat la Dame Stewart à peu près dans le même état qu’il l’avoit vue précédemment, n’ayant pas remarqué en elle beaucoup de difference ; qu’elle étoit d’une taille affez grande, et bien faite, le vifage un peu longue, paroiffant avoir des couleurs, et n’étant pas ni maigre ni graffe de vifage.” — 153. G. — 154. B. — 155. F. — 154. H.

This is the ftrongeſt of the three or four negative witneſſes, which have been produced againſt the pregnancy. It is obſervable, this man was of rank to breakfast with the ſervants, and to ſuffer fir John to pay his expences on the road. Lady Jane’s ſilence about herſelf, and her being with child, is no more a proof, that ſhe was not with child when he ſaw her firſt, than it is a proof, that Archibald was not in the houſe at his later vifits : and as — 152. A.

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\* “ That during this journey he did not obſerve that lady Jane was with child, becauſe he paid no attention to it ; and he did not even know, that ſhe was the wife of Mr. Stewart, nor if ſhe was married or unmarried ; that ſhe wore a long cloak, which reached from her ſhoulders to her feet. That Mr. Stewart behaved to her with reſpect.”

† “ That he found Mad. Stewart almoſt in the ſame ſituation, in which he had ſeen her before, not having obſerved in her much difference ; that ſhe was pretty tall, well made, her face a little long, and appeared to have ſome colour, and was neither lean nor fat in the face.”

P. P. 151. K.  
 — 152. E.  
 — 154. H.

to Mr. Guenet's observation, he owns, she was so dressed on the road, that he could not judge of her shape; and we must believe he paid little attention to her face, when he talks of her colour. By another part of Mr. Guenet's deposition it appears, that the maids travelled in the coach; that the roads were rough; and that the carriage went only a league an hour.

Serv. p. 19. D.

Another circumstance in this deposition does credit to Isabel Walker. We must hear her first; on the service she says, " lady Jane was taken ill at a village, called Rhetelle, in the way from Sedan to Rheims: that she was so bad, they were afraid she would be brought to-bed there; but having recovered, they proceeded to Rheims." On her third examination she is more explicit, and says, " that lady Jane was taken ill and distressed at the time of her arrival at Rhetelle, and immediately was carried into a bed-room by her; and that she sat up with her all night, and considered the fatigue of her journey was the cause of her illness to a woman in her situation."

Min. 6. D.

P. P. 152. G.

Monf. Guenet says, \* " Qu' étant arrivés à l'auberge de Rhetelle, Mad. Stewart se plaignit de s'être fatiguée ou incommodée; dit, qu'elle ne souperoit pas, et demanda un boullion; qu'on lui en donna un, qu'elle prit; après quoi elle fut conduite par Monf. Stewart dans l'appartement, qui lui étoit destiné pour se coucher; que ses femmes de chambre et la dame de compagnie y entrèrent avec elle, et y restèrent jusqu'à ce qu'elle fut couchée; after which they all came down to supper."

Tab. of Contents, p. 7.

This part of Monf. Guenet's deposition is referred to by the pursuers, as a confutation of the account given by Isabel Walker.

P. P. 17. D.

A note in sir John Stewart's hand-writing (of which some account will be given hereafter) produced by Mr. Charles Brown, has these words, " from Aix-la-Chapelle to Liege, to Sedan, to Rhetelle, to Rheims, where we feared a miscarriage." This fear of a miscarriage—Mrs. Hewit's likelihood of a delivery at Sedan—and Isabel Walker's account of what passed at Rhetelle, have all been confounded.—The pursuers insist, that they all tell a lie, because they date the same incident from three different places. Were this indeed the same incident, one would rather think the difference of place arose from a defect of memory

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\* " That on their arrival at the inn at Rhetelle Mad. Stewart complained, that she was fatigued or indisposed; said, that she would not sup, but asked for some soup; which was given her and she took it; after which she was conducted by Mr. Stewart to her bed-chamber; that her chamber-maid and female companion went with her, and remained there, till she was in bed."



at the end of seventeen years, than from a blunder in any recent project; for Sir John, Mrs. Hewit, and Isabel Walker had sufficient means of communication in 1762 and 1763, had they troubled themselves to make their depositions uniform. In reality, lady Jane was now in the eighth month of her pregnancy, when accidents are most frequent. Mrs. Hewit was probably frightened at the commencement of the illness. What Isabel Walker says, is confirmed beyond the possibility of a doubt by Mr. Guenet; and she tells the fact; as for Sir John Stewart, he speaks of nothing but his fears; and if we remember, in what period of her pregnancy lady Jane was at this time, we shall not think it improbable, that the family might be frequently alarmed on this account.

We must here refer to Almon's book. It is necessary to correct an unlicensed printer. At p. 171 it is said, "We have the evidence of Mrs. Hewit and of Mrs. Glas, as to what happened there, and which evidence contradicts each other to the last degree, though both of them seem to agree in lady Jane's being in danger of a miscarriage there." This trespasses on science, as much as on fact. A seven months birth is never called a miscarriage; and the witnesses are so far from differing as to what happened *there*, that their designation of the place is the only point, on which they seem to differ. Mrs. Hewit says, lady Jane was ill at Sedan—Isabel Walker says, lady Jane was ill at Rhe-telle.—With respect to every other circumstance their description is so very similar, that the pursuers contend, they both meant the same thing. Such remarks we must expect to hear from those, who never read the proof.

## S E C T. XVI.

### *Of Lady Jane's person at Rheims.*

**I**N the evening of the 7th of June lady Jane arrived at Rheims. P.P. 153. B.  
 She was conducted to Mr. Andrieux's by Mons. Guenet; but,  
 as that gentleman had done nothing in consequence of Mr. Flo- — 153. F.  
 rentin's letter, and had not room in his house for this company,  
 they were obliged to lodge for one night at an inn. On the 8th — 157. C.  
 they went to their private lodgings at Mr. Hibert's.

Mr. and Mad. Hibert were absent during the whole time this — 159. L.  
 company lodged at their house; they had left the care of it to — 156. L.  
 their eldest daughter Miss Louise Hibert, who with a brother the  
 Chanoine Hibert, and a younger sister Henriette, now Mad. Pre-  
 voteau, were all the persons of the family then at home.



P.P. 157. C.

— 155. H.

Mr. Stewart never concealed his name ; in the register of this house it is written *Eftouar* ; but as Effy Caw spoke very little French at this time, Isabel Walker still less, and Mrs. Hewit none at all, the Hiberts were some time before they knew, that the first lady was the gentleman's wife. Why they did not ask Mr. Andrieux, or the Scotch gentlemen who visited at the house, is known only to themselves. They chose to go to work another way.

D.P. 47. C.

P. P. 157. K.

— 156. E.

D. P. 47. D.

The Chanoine Hibert deposes (which is confirmed by his sisters) that he visited Mad. Stewart frequently in her apartments, and sometimes walked abroad with her and Mrs. Hewit : “ Qu'il a

“ remarqué que Mad. Stewart étoit enceinte, ayant observé comme

“ une monticule utérine fort notable ; ce qui a mis le deposant

“ dans le cas de dire aux demoiselles Hiberts ses sœurs, Sçavez

“ vous quelles personnes vous avez ici ? Elles ne se font point

“ dites mariées ; il y a du mystere là-dedans, car cette damé me

“ paroît notablement grosse. A quoi les demoiselles ses sœurs ont

“ répondu, Qu'est ce que cela nous fait ; ce sont des étrangers—

“ qu'un soir qu'il étoit avec Mad. Stewart, Monf. Stewart ayant plus

“ tardé qu'à l'ordinaire, lui deposant dit à Mad. Stewart, Monf.

“ votre mari est bien long tems à revenir aujourd'hui ; à quoi elle ré-

“ pondit en souriant, Eh ! qui est ce qui vous a dit, qu'il étoit

“ mon mari ? & le deposant lui repliqua aussi en souriant, C'est

“ votre situation, Mad. ; replique, à laquelle elle n'ajouta rien,

“ qu'un sourire.” He adds farther, “ Qu'elle avoit le visage long,

“ maigre, & tirant sur le pale.”

An early speaker in Almon's book is made to think (a) “ that the “ Abbé Hibert was let into the secret ;” but this is hardly consistent with the evidence. Many instances occur daily of women who fantastically desire to conceal their pregnancy ; but did any one ever hear of a woman, when she was fishing for witnesses to her pregnancy, as the pursuers contend lady Jane was, who took pains to let her gudgeon off the hook, after he was fairly on it ?

(a) Lord President.

\* “ That he observed that Mad. Stewart was with child, having observed her belly remarkably prominent ; upon which the deponent said to his sisters, the miss Hiberts, Do you know what persons you have here ? they do not say they are married, there is a mystery in this, for the lady appears to me to be evidently with child. To which the miss Hiberts, answered, What is that to us ? they are strangers. — That one night when he was with Mad. Stewart, Mr. Stewart having staid later abroad than ordinary, the deponent said to Mad. Stewart, Your husband is very long in returning to day ; to which she answered with a smile, Who told you, that he was my husband ? And the deponent replied, also smiling, It is your situation, madam : to which she made no answer, but smiled.—That her face was long, thin, and palish.”

From



From what the Abbé says of his sisters, one would be apt to imagine, that if these young ladies saw nothing, it was because they chose to look another way; and indeed Mademoiselle Hiberts' deposition does not lead us to think otherwise.

With regard to her brother's conversation she says, “ \* Que P. P. 158. A. son frere lui a dit dans le tems; Sçavez vous, ma sœur, à qui vous louez votre appartement; est ce que vous ne vous appercevez de rien? Que m'apperois de quelque chose—A quoi la deposante répondit, Mon frere, ce sont des personnes de consideration, qui m'ont été adressées par Mons. Andrieux, & si je m'appercevois de quelque chose, j'irois lui demander ce qui en est; & au surplus ce sont des étrangers, qui sont aujourd'hui ici, & demain ailleurs.”—And afterwards she says, “ Qu'elle ne se souvient pas, si après ce discours de son frere elle regarda plus attentivement l'état de Mad. Stewart; observe qu'elle auroit dû le faire; mais ne peut assurer à present, si elle l'a fait ou non.” — 160. A.

This is plainly the same story as that, which her brother told; and one may judge from it, who has acted the honest part. It is strange this lady never consulted Mr. Andrieux, on whose credit and authority she seems to rest. The Abbé tells us, how he was bullied by the pursuers agents, and by various chicanery prevented from being heard before the Tournelle, which he resented as far as a clergyman should resent it.—Mademoiselle relates, how she was affronted by a young woman who came with the duchess of Douglas, and who had been before at Rheims with lady Wigton, who told her that she had been bribed, which she heard with a singular resignation and indifference. She does however the justice to this young person to add, “ † que cette demoiselle (Miss Primrose) ne lui a point dit, qu'on lui demandat autre chose que la verité.” — 161. B. D. P. 48. C. to — 49 E. P. P. 160. G. to — 161. B.

As to the pregnancy she says, “ ‡ que dans ce tems là elle ne s'est point apperçue, que la dame qui parloit François fut grosse; qu'elle portoit toujours un corps & un petit panier; & qu'elle — 157. L.

\* “ That her brother said to her at the time, Do you know to whom you have let your lodgings? do you observe nothing? I observe something. — To which the deponent answered, My brother, these are people of fashion, who have been recommended to me by Mr. Andrieux, and if I observe any thing, I will go and ask him about it; and besides they are foreigners who are here to-day, and elsewhere to-morrow—that she does not remember, whether after this conversation with her brother she observed the situation of Mad. Stewart more attentively or not; observes that she ought to have done it, but cannot say at present, whether she did it, or not.”

† “ That this young lady did not say to her that one asked her to say any thing but the truth.”

‡ “ That at this time she did not observe, that the lady who spoke French was with child; that she always wore stays and a small hoop; and she might have been with child, although the deponent did not observe it.”



“ pourroit être grosse, quoique la deposante ne s'en soit point  
 “ apperçue.”

P.P. 155. F. Mad. PrevotEAU, the younger sister says, “ \* qu'elle n'a point  
 “ de memoire de s'être apperçue, que Mad. Stewart fut grosse ;  
 “ qu'elle ne peut dire, si elle l'étoit, ou si elle ne l'étoit pas.”

D. P. 47. G. These witnesses seem to agree, that lady Jane never appeared  
 P.P. 155. I. without a hoop ; and the ladies say, that they severally saw Mrs.  
 — 158. D. Hewit and the servant-maids making up linen, which Mad.  
 PrevotEAU knew to be child's cloaths, though Effy Caw endeavoured to hide it. There seems to have been a reciprocal reserve  
 — 160. D. between this family and their guests. The demoiselles Hiberts never  
 — 156. D. knew the lady's name, till she had left the house : and sir John  
 and lady Jane left it without intimating to the Hiberts, whither  
 they were going. This is the case, as far as we can trust the memories of these witnesses ; though as it is in proof, that sir John  
 and lady Jane left Hibert's at two o'clock in the morning to go to  
 the Paris stage-coach, it is difficult to believe that the family of  
 Hiberts were ignorant of this circumstance at the time it happened.

The next negative witnesses produced by the pursuers are the  
 — 161. I. demoiselles Sautrez. The youngest, Therese Sautrez says, she  
 did not see lady Jane before she went to Paris ; yet she is referred  
 to in the pursuers table of contents, as a negative witness.—The  
 — 163. G. eldest says, she altered an English gown for lady Jane into the  
 French cut, took her measure, and tried it on, without observing  
 the pregnancy ; and that she made a new gown for her after her  
 return.

This is a circumstance with which the pursuers parade in their  
 Condescendance of Facts and table of contents ; yet when the deposition  
 of Mademoiselle Sautrez is examined, it is brought down  
 — 165. to very little.—She deposes, “ que la maniere, dont elle prend la  
 “ mesure pour une robe, est de prendre avec une bande de papier  
 “ la largeur du dos de la personne qu'elle doit habiller, & la longueur  
 “ de la taille depuis l'aisselle jusqu'à la hanche ; & que c'étoit  
 “ ainsi qu'elle l'a pris à Mad. Stewart, & à la demoiselle de compagnie ;

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\* “ That she does not remember to have observed, that Mad. Stewart was with child ;  
 “ and that she cannot say, if she was or was not.”

\* “ That the manner, in which she takes the measure for a robe, is to take with a strip  
 “ of paper the breadth of the person's back, and the length of the cut from the arm-pit to  
 “ the hip ; and that it was in this manner that she measured Mad. Stewart and her female  
 companion :



“ pagnie ; qu'elle n'a jamais vu Mad. Stewart avant ni après son  
 “ voyage de Paris, fans qu'elle fut couverte d'un grand mouchoir  
 “ sur les épaules, même lorsque elle deposante lui a pris la me-  
 “ sure pour ses robes, & qu'elle les lui a essayées ; & qu'alors  
 “ elle avoit un corps ; qu'ordinairement tant avant qu'après le  
 “ voyage de Paris Mad. Stewart portoit un petit panier ; qu'elle  
 “ avoit ce panier quand elle prit la mesure & essaya les robes  
 “ de Mad. Stewart ; elle ne fit aucune attention à son état pour  
 “ observer si elle étoit grosse ou non ; qu'en voyant l'enfant, & en  
 “ apprenant de Mademoiselle Effai, qu'il étoit l'enfant de Mad.  
 “ Stewart ; il ne vint pas dans l'esprit de la deposante, que cet en-  
 “ fant ne fut pas en effet de Mad. Stewart, quoique elle depo-  
 “ sante en eut été surprise, parcequ'elle ne s'étoit point apperçue de  
 “ la grossesse.”

It is plain, that by measuring the breadth of lady Jane's back between the shoulders, when she wore a large handkerchief and hoop, this witness was no more in condition to observe the pregnancy, than any other person, who saw lady Jane drest. She says, she never had the least suspicion, that lady Jane was not really with child, and lays all the fault on her own inattention.

It is imagined, that had the pursuers produced a hundred such witnesses as Mademoiselle Sautrez, they would never overbalance the credit of two honest persons, who attested the pregnancy, and exhibited a proper cause of their knowledge.

It should be observed, that what this witness says, is contradicted in the only point of consequence both by Mrs. Hewit and Isabel Walker. Mrs. Hewit says, lady Jane had no cloaths made, P. P. 251. F. or altered, before their return from Paris. Isabel Walker says, — 51. L. she had only a gown a little widened, and that it was done by a person employed by Mad. Andrieux, and that this person did not — 51. A. see lady Jane.

This latter circumstance stands distinct from the account given by Mademoiselle Sautrez ; because it is certain, Mademoiselle — 158. F. — 163. E.

“ companion : depose, that she never saw Mad. Stewart before nor after her journey but  
 “ covered with a large handkerchief over her shoulders, even when she, the deponent, took  
 “ her measure and fitted on her gown ; and at that time she had stays on : depose, that com-  
 “ monly, as well before the journey to Paris as after it, Mad. Stewart wore a small hoop ;  
 “ and she had on this hoop when she took her measure, and fitted on her robe : that she  
 “ gave no sort of attention to Mad. Stewart's state, to know whether she was with child, or  
 “ not.—That on seeing the child, and learning from Effy that it was the child of Mad.  
 “ Stewart, it did not come into the deponent's head, that the child was not in fact Mad.  
 “ Stewart's, though she was surprised at it, as she had not observed the pregnancy.”

Sautrez



Sautrez was recommended by Mademoiselle Hibert about ten days before lady Jane left the house.

P. P. 164. 1. The negative part of the testimony of Mrs. Hewit and Isabel Walker receives some countenance from Mademoiselle Sautrez's book, in which are various articles of work done for lady Jane after her return from Paris, but none before the journey thither. However the writer of these papers has often reason to express his diffidence of negative testimony, the Miss Hiberts give a strong negative to many things, which certainly happened. One witness will say a thing never happened; another that he does not remember it: the difference of expression often arises from the manner, in which the question is put; the difference of the sense is, at the distance of seventeen years, in most cases very little. Mad. Sautrez did not see lady Jane in front. None can believe, that lady Jane at the very time she is pretended to be shamming a pregnancy, as the pursuers contend, would without reason suffer any one to examine her person. Mademoiselle Sautrez says expressly, that she did not examine it; and declares a full conviction, that lady Jane was pregnant.

— 165. F. There is a remarkable circumstance attending all the negative witnesses at Rheims, which shews either, that they are to be classed with the messieurs who examined Michell's book, or that they really never paid any attention to lady Jane's person, and ought to be considered as if they had never seen her. They all saw her at her return, and knew the very day she declared she was brought to-bed; yet not one will venture to say, that he had any the most slight suspicion of imposture, till this cause commenced. They declare, however, that they did not observe the pregnancy; and yet when Mr. Andrew Stuart went first to Rheims, he could not find one person at Rheims, who had seen lady Jane before her departure to Paris, and had not observed the pregnancy. For proof of this we need go no further than the memorial laid before his French counsel in October 1762, in which it is expressly said, that the Hiberts had observed, that lady Jane was with child; and in the premiere plainte it is said, \* “ que les personnes, qui l'y ont vue, ne pouvoient presumer par toutes les marques exterieurs propres à l'indiquer, qu'elle fut aussi avancée, qu'elle auroit dû l'être, suivant l'époque de son prétendu accouchement, qui n'avoit alors été éloigné que de quelques jours.”

\* “ That the people, who saw her at this time, could not presume by her exterior appearance, that she was so far advanced in her pregnancy, as she ought to have been, according to the time of her pretended delivery, which was then only at a few days distance.”



The epoque of a delivery must be reckoned, not from the time it really happened, but from the time the pregnancy was observed. It is very probable, that lady Jane had mistaken some days, and that this was what the Rheims witnesses told Mr. Stuart. They had never seen lady Jane in another situation; and ignorant of her natural shape, they could be but imperfect judges of her pregnancy. But it is clear from this passage, that there was no person at Rheims, who had seen lady Jane at this time, who ever said that he had not observed the pregnancy, till the *Monitoire* was published.

Lady Jane lived retired at Rheims in the manner usual to women in her situation. Sir John Stewart was habitually from home every day at the publick coffee-houses, where he became acquainted with Mons. Maillefer Forzy, the syndic of Rheims, and two Scotch officers, who were then prisoners of war, Mr. Maclean and Mr. William Mackenzie. These two gentlemen, with Mr. Macnamara and Mr. Andrieux's family, seem to have been all the acquaintance lady Jane had at Rheims before her expedition to Paris. Mr. Maillefer offered to wait on lady Jane, but she declined his visit on account of an indisposition.

P. P. 50. E.  
D. P. 146. G.  
— 151. B.  
— 152. F.

— 151. C.

Mr. Maillefer is the only person at Rheims, who made offer of this civility; and yet it is said by the pursuers in their table of contents, that Sir John got acquainted with several of the principal people of the place, but he avoided letting them see lady Jane; and for proof of this we are referred to four witnesses, three of whom lived in the house, and saw her habitually whenever they pleased.

P. 8.

This circumstance is not left out of Almon's book. At page 87 we read, "(a) It is really amazing, that when at Rheims, they should have concealed the whole affair from Mons. Maillefer and his family, persons of high rank and character, who seem to have shewn great respect to them; and revealed it to so many others, &c." It is really amazing, that a behaviour so natural should be subject to suspicion. Sir John's acquaintance and connection with Mr. Maillefer was extremely general; and as lady Jane was not then in a condition to make any visit, it was extremely natural for her to decline receiving any, especially from gentlemen. But this did not hinder her from seeing her countrymen; and as for the so many others, to whom the pregnancy was revealed, they amount precisely to three persons, Mr. Mackenzie; Mad. Andrieux, whose assistance was wanted for the child-bed

(a) Lord President.

A a

linen;

D.P. 55. G. linen ; and Mr. Querangal, an officer of the customs, whom sir John pressed the more earnestly to procure his trunk, which had been stopt at Torcy, from this motive, that his wife was with child, and wanted it very much.

Mr. Maillefer's acquaintance with sir John Stewart was at this time so general, that it is pretty clear he did not even know sir John's name : but this, and whatever else relates to Mr. Maillefer's letters to Godefroi, have been explained in the state of the pursuer's proof. The same person, who had just created his *many others* out of three persons, is said to have turned that *one letter* of instruction to the agent of Rheims into *letters of recommendation* to Paris. What can we think of a presumptive proof, which stands in want of such helps as these ?

P.P. 5. I. Let us proceed to enquire, what the other persons, who saw lady Jane at this time, say of her person. Mr. Macnamara is dead ; but a letter from him has been produced by sir James Stewart. Mr. Macnamara writes, \* “ Il m'a paru, que Mad. Stewart a été  
 “ enceinte, et cela par sa mine, et d'autre incommodité, qu'elle  
 “ se plaignit ; mais en sa taille je ne pouvois rien distinguer, à  
 “ cause que tous les fois que j'avois l'honneur de la voir, elle  
 “ étoit habillée, & portoit toujours ces grands panniens des  
 “ dames.”

D.P. 363. E. Mr. Maclean, who is now a major-general and governor of Almeyda, deposes, “ that he saw lady Jane before the journey  
 “ to Paris : that lady Jane never, so far as this deponent can re-  
 “ collect at this distance of time, mentioned to him her being with  
 “ child ; nor did he ever take any sort of notice of it. Lady Jane  
 “ was a very thin-faced woman, and always wore a large hoop,  
 “ which, if she was with child, must have hid it from the de-  
 “ ponent, who never thought of examining her critically on that  
 “ score : that he does not remember to have had any conversa-  
 — 363. F. “ tion with any person about lady Jane's pregnancy, till a day or  
 “ two after she left Rheims, that one of her maids told him her  
 — 365. C. “ lady was gone to lie-in : that he supped with sir John the night  
 “ before he set out for Paris ; and that he and lieutenant Mac-  
 “ kenzie helped lady Jane into the coach, with both their  
 “ hands.”

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\* “ That it appeared to me, that Mad. Stewart was with child, by her looks and  
 “ other indispositions of which she complained — but I could observe nothing from her  
 “ shape, because all the times that I had the honour to see her, she was dressed in a large  
 “ hoop.”



Mr. Mackenzie is more particular; he says, he believes lady Jane and colonel Stewart set out for Paris eight or ten days after Mr. Maclean and he became acquainted with them. He specifies their several visits, and says, "Upon all these several occasions the deponent observed, that lady Jane had the appearance of a woman far gone with child, being *very big-bellied*: That when Mr. Maclean and the deponent had parted with lady Jane as above, they went home, and on their way Mr. Maclean observed to the deponent, that lady Jane was with child, and gone to Paris to be delivered; to which the deponent answered, she was very far gone with child: Depones, that two or three days after the deponent and Mr. Maclean's first acquaintance with colonel Stewart, he told them, that lady Jane and he were married, and that he was going with her to Paris, where she was to lie-in."

It is plain, that these gentlemen contradict each other in one circumstance of little consequence, and difficult to be remembered at such a distance of time. The part of their testimony which is necessary to be remarked, is, that one of them did observe the pregnancy, and the other did not, or at least does not remember that he did.

Mad. Mayette, with whom lady Jane lodged after her return from Paris, is a slight witness to the pregnancy. She says she met lady Jane and Mrs. Hewit in the street, and depones; " \* Que Mad. Stewart lui a paru marcher avec difficulté, & avoir beau-coup d'entournure & la posture d'une femme enceinte;" and that when Mr. Macnamara came to her to bespeak an apartment for lady Jane against her return from Paris, where he told her she was gone to lie-in, she said to him, " † Je crois que c'est une dame, que j'ai rencontré dans la rue des Morts; & que si c'est elle, il étoit tems qu'elle partît, car elle avoit beaucoup de peine à marcher."

The pursuers argue the falshood of this deposition, because Mad. Mayette has dined with the duchess of Douglas—because she observed, what the abbé Hibert says he did not look at—and because Mad. Mayette says, she went into Flanders in June or in the beginning of July 1748, and therefore could not have this

\* "That Mad. Stewart appeared to her to walk with difficulty, and to have a great bulk, and the posture of a woman with child."

† "I believe it is the lady I met in the rue des Morts; and if it is her, it was time for her to set out, for she had great difficulty in walking."

conversation with Mr. Macnamara about the lodgings, which probably were not hired till near the return of lady Jane.

D. P. 60. E. But, as she says in the same place, that she was absent about two months, and that she did not return till three weeks or a month after the arrival of Mr. and Mad. Stewart, that is, after the 16th of August, it is plain there is time enough for this conversation before she set out; and if lady Jane was in any manner dissatisfied with the Hiberts, there is nothing unnatural in supposing that Mr. Macnamara might be employed in finding another lodging before they left Rheims, and begin his enquiry immediately, or soon after their departure. Mad. Mayette says, they agreed on the price; but the time did not begin till the family returned. And it is certain from Mrs. Hewit's letter to the maids, dated the 12th of August (in which she desired Isabel Walker to make fires), that the house was taken, and that they were informed of it by Mr. Macnamara long before the 12th of August.

— 55. E. Mr. de Querangal, an officer of the customs, is the next witness to the pregnancy. He deposes, that colonel Stewart came to him to enquire after a trunk, which had been stopt at Torcy; and told him, he had the more need of his trunk, as his wife was with child, and wanted it. He procured an order for the delivery of the trunk, dated Paris 18 June 1748, which he exhibits. He adds, that in execution of this order, he sent to Torcy; and Mr. Stewart's effects were returned him two or three days after: That he saw Mr. Stewart two or three times in the street Depuis la Remise.—There must be some little mistake here as to the time of sir John's getting the trunk; for the first news P. P. 93. A. sir John Stewart received of the trunk, was by a letter from Mr. Andrieux, addressed to him at Paris; which clearly marked that the trunk did not arrive at Rheims before his departure. For the D. P. 56. c. rest, Mr. Querangal goes on, “\* Que 2 ou 3 jours avant le depart  
“ pour Paris de Monf. & Mad. Stewart, ils vinrent chez lui, de-  
“ posant, pour lui demander, s'il étoit necessaire de faire plom-  
“ ber, ou prendre quelques autres précautions pour le transport  
“ de leurs malles à Paris: où Monf. Stewart dit alors à lui, de-  
“ posant, que Mad. Stewart alloit faire ses couches. Qu'alors il  
“ fit

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\* “ That two or three days before the departure of Mr. and Mad. Stewart for Paris, they  
“ came to him, the deponent, to ask him, if it was necessary to seal their trunk, or take  
“ any other precautions with it, in order to transport it to Paris; where Mr. Stewart then  
“ said to him, that Mad. Stewart was going to lie in ——— that upon this he paid atten-  
“ tion



“ fit attention à Mad. Stewart ; qu’il remarqua que cette dame  
 “ s’affeyoit, & se levoit avec peine, comme une femme grosse, &  
 “ que Monf. Stewart lui donna la main pour l’aider à se relever :  
 “ Depose, qu’après cette declaration de Monf. Stewart sur la  
 “ grossesse de sa femme, il parut à lui deposant par la pâleur, &  
 “ l’air tirée du visage de Mad. Stewart, par sa maniere de s’asseoir  
 “ & de se lever, & par sa taille, que cette dame étoit grosse.”

The pursuers memorialist lays out his labours in a most violent attack upon the honour of all the witnesses to the pregnancy at Rheims, particularly of Mrs. Hewit, Isabel Walker, Mad. Mayette, and lieutenant Mackenzie, upon no other foundation, than that they differ in some trifling circumstances. Mrs. Hewit for instance remembered, that lady Jane did not often go abroad—abbé Hibert walked with her—and Mr. De Querangal met her several times. Had these witnesses agreed in every circumstance, every reasonable person would have suspected them of perjury. Errors arising from the defect of memory must be expected at the distance of seventeen years.—Sanry’s child was taken from him much in the same manner the witnesses have related ; it was a transaction only of three days, which deeply interested the persons who saw it ; it became the immediate subject of a public enquiry, in which no doubt the persons, who are at present witnesses, had many occasions to consult each other, and settle in their memories the principal circumstances of the fact ; yet in the detail of that short and interesting transaction there are not less than forty mistakes and contradictions in the time, in the number of persons, number of visits, and other circumstances.—What indulgence then is due to witnesses who are called upon at such a distance of time to recollect trivial circumstances, in which they could never possibly be in any manner interested ? It is not upon such grounds, that the pursuers witnesses are censured by the writer of these papers. He has never ventured to say, that any one is perjured, but either because the witness was confuted by a written testimony, which he the witness had seen and concealed ; or because he is known to have recently declared the very contrary to what he has sworn ; nor even in this latter case has he ever dared to prefer a private declaration to a public deposition, unless what the witness has said in private appears confirmed by the tes-

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“ tion to Mad. Stewart, and observed, that she sat down and rose up with difficulty, as a  
 “ woman with child ; and that Mr. Stewart gave her his hand to help her to rise up. And  
 “ that after this speech about the lady’s pregnancy, it appeared to him, the deponent, by  
 “ the paleness and thinness of her face, by her manner of sitting down and rising up, and  
 “ by her shape, that she was with child.”

timony

timony of some other person of equal credit. This is the rule which the writer of these papers has laid down for himself. He cannot therefore consider the frivolous critique of the pursuers memorialist in any other light, than that of a scholastic exercise of an able logician, who fights for victory, and not for truth.

It is now time to mention what has been deposed on the part of the deceased Effy Caw, the youngest maid-servant.

Serv. 9. c.

— 10. A.

Mrs. Hepburn says, “ that Effy Caw was dismissed lady Jane’s service, after lady Jane came to England: that she applied to the deponent for service, who recommended her to her niece, Miss Bruce, and her daughter-in-law, Mrs. Hepburn: that in these services the deponent heard her frequently declare, that were she to step into eternity next moment, she would declare, that lady Jane was with child: that the deponent had the more regard to this, as she seemed to be a little piqued at lady Jane’s turning her from her service.”

D. P. 382. F.

Mr. Peters bookseller in Edinburgh deposes to an occasional conversation he had with Effy Caw; and that Effy Caw told him “ lady Jane had all the symptoms of pregnancy, that ever she knew a woman have that was with child; and that she had access to know that, as she dressed and undressed lady Jane; and added, that she had no occasion to tell a story, as she had left lady Jane, and was going to England.”

D. P. 382. B.

Mrs. Rickard Hepburn, the girl’s last mistress, says, “ that she often spoke of the pregnancy, and of her being fully satisfied of the defender and his brother being lady Jane’s children; and remembers, that the deponent being with child, and complaining of the straitness of her gown, Effy Caw desired her to do what she had done formerly to lady Jane when with child, namely to slit up the lining of the back of her gown, and to put in pye-holes in it, and lace it up, which Effy accordingly did; and that there were other particulars with respect to lady Jane’s pregnancy and the children, which Effy Caw mentioned to the deponent, but which she does not now recollect.”

P. P. 50. 1.

Isabel Walker after deposing, that she had felt lady Jane with live child, adds—“ And that the other maid Effy Caw, if she were alive, would swear to the same purpose with the deponent; for the deponent remembers, that one day at Rheims she told the deponent, that having been pinning down my lady’s robe, she felt the child move in lady Jane’s belly; that my lady pushed Effy away, saying she would put the pins in herself, and that  
“ my



“ my lady's face turned red ; and Effy in telling the story to the  
 “ deponent said, that my lady could not be more bashful, if she  
 “ had been with child of a bastard.”

The pursuers are much at a loss, what to say of this girl, too young for an accomplice, and, as she is proved to have been twenty-two years of age, too old to be duped. At last it comes out in their memorial, that Isabel Walker was an accomplice, and Effy Caw was deceived. It is asserted, that Effy Caw had no access to see lady Jane without her cloaths, directly contrary to what she told Mr. Peters. Yet a few pages before, this same girl Effy Caw is charged by the memorialist with having invented a lie to cover the fraud. Mem. pt. 2. P. 109.

There is little discernible difference between these two servants. The French women, where they lodged, called them in all places femmes de chambre, or filles de chambre. They both consulted Mad. Tewis at the beginning of the pregnancy—they both acted occasionally in the same station about lady Jane's person—were in the room with her, when she undressed and went to bed—they both concur in the same positive testimony to the pregnancy, though Effy Caw was dismissed the service, and thought herself injured. The pursuers have made but one slight mention of Effy Caw in their memorial ; and I do not find, that the speakers in Almon's or Anderson's books have once condescended to tell us, what they think of her. D.P. 1. B. — 5. B. — 3. D. — 47. A. — 15. F. P.P. 152. H.

This is the proper place too to mention an observation, which is often made by the pursuers. If a witness concur with Mrs. Hewit and Isabel Walker in deposing, that lady Jane's pregnancy was remarkable, and that she was very big ; it is said, this is no proof of pregnancy, as it was easily affected. If on the other hand, a witness, such as Guenet, says he did not observe the pregnancy ; this is insisted on as full proof of Mrs. Hewit's and Isabel Walker's falshood : and at the same time the pursuers admit, that this woman Effy Caw, then twenty-two years of age, who was constantly with them, was imposed upon ; which is absolutely impossible.

It is a great loss to Mr. Douglas, that the family of Andrieux was reduced to one single person, before the commission for taking the proof came out. Mr. and Mad. Andrieux are dead ; and Mr. Florent Andrieux their son is the only witness of that house, he was only nineteen years old in 1748.

Mr.

D. P. 65. F.

Mr. Florent Andrieux depose, “ que lui-même, depasant, ne  
 “ s'est jamais apperçu, que Mad. Stewart fut grosse ; observe le  
 “ depasant, qu'il ne prétend pas dire, qu'elle ne fut pas grosse, ni  
 “ que sa mere ait prétendu ni soupçonné non plus que lui, qu'elle  
 “ ne fut pas grosse ; d'autant plus, qu'il y a souvent des femmes  
 “ grosses sans paroître être.”

—64. B.

It is not to be expected that a young man of nineteen should make very judicious remarks on a lady's pregnancy. Had Monf. Florent Andrieux observed the pregnancy, he would have been a witness of not quite so much importance as Miss Primrose ; but it seems he has more to say of his mother, and depose, “ que Mad.  
 “ Stewart quelque tems après son arrivée en cette ville, pria Mad.  
 “ Andrieux, mere du depasant, de lui faire faire quelques hardes  
 “ d'enfant, disant à la dite dame Andrieux, qu'elle partoît incessam-  
 “ ment pour aller faire ses couches à Paris : depose, qu'il est cer-  
 “ taine que Mad sa mere a fait faire les hardes en question, mais  
 “ ne sçait point par qui elles ont été faites.

—64. F.

That Mad. Andrieux remained fully persuaded of the pregnancy appears, not only from Mr. Andrieux's deposition, who says, “ † qu'il n'a entendu personne, dans le tems antérieur au pro-  
 “ cès, dire qu'on soupçonnât ces deux enfants de n'être pas de  
 “ Monf. & Mad. Stewart ;” but particularly from her conduct. She was many times with lady Jane before the journey to Paris, and had all possible means of knowing, whether the pregnancy was real or not. After lady Jane's return, she seems to have at-  
 —151. D. tached herself more to a new acquaintance, Mad. Maillefer, who  
 —147. C. was a lady of fashion, than to Mad Andrieux, whose husband was  
 —64. F. a wine-merchant. Mad. Maillefer was first asked to be god-mo-  
 —147. D. ther to Mr. Douglas, but declined the office upon a scruple of re-  
 —311. A. ligion : Mad. Andrieux was next asked, and accepted it. Would  
 she have acted thus ? Would she not have availed herself of some  
 excuse, if she had suspected any thing dishonourable in the con-  
 duct of this family ? It is plain she mistrusted nothing ; and it is  
 known she continued her attachment to lady Jane, from her let-

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\* “ That he himself never observed, that Mad. Stewart was with child ; but observes,  
 “ that he does not pretend to say, that she was not with child, nor that his mother pretended  
 “ or suspected, any more than he, that she was not with child ; more especially as there are  
 “ often women with child without appearing to be so.”

† “ That Mad. Stewart, some time after her arrival in the town, desired Mad. Andrieux,  
 “ the deponent's mother, to get some child's cloaths made for her, saying, that she was to go  
 “ very soon to Paris to lie in : that he is certain that his mother did get these cloaths made,  
 “ but does not know by whom they were made.”

‡ “ That he never heard any one, before the commencement of this process, say these  
 “ two children were suspected not to have been the children of Mr. and Mad. Stewart.”



ter to sir John Stewart, dated Rheims, the 30th of May 1750, in D. P. 887. E. which are the following words, letters and syllables.

“ \* Monf. j'ay refus votre cher lettre qui a bien calme mon  
 “ esprits de la nuis que je resantes de neux plus savoir où vous etiez  
 “ ny ma chere milady, ny mon cher petit pouleſt je an neſt plures  
 “ cent foy, je neux conteſt plus a voir de ves nouſſelle puisque  
 “ jay ete fiſe moy cent an na voir je ſuis bien cent ſible au bonte  
 “ que mylady a pour moy je lanbraſe de tout mon cœur de meme  
 “ les cher petit meſieur an particulier mon cher pouleſt que je  
 “ nous blires jamay je preante may reſpet les plus profont a Made-  
 “ moiſelle Jouet Monſieur puisque votre de meur neſt pas ancore  
 “ fique je ves pries Dieu qui vous inspire de reuenire a Reims, ſy ſa  
 “ vous ſepare de votre peit ſa raprocheura mon cher pouleſt du  
 “ cien c'eſt un petit Franſay ſy jay le bonheur de leur revoir  
 “ quelle que jour je ferray au conble de ma jois, &c.”

After this it is in vain to plead, that Mad. Andrieux is a witneſs againſt the pregnancy. The defender has not the advantage of her testimony; but it is certain ſhe never miſtruſted the pregnancy; and that ſhe had very ſufficient means of knowing, whether it was real or affected.

## S E C T. XVII.

*Of the motives, on which Lady Jane removed to Paris.*

WE are come to the end of the proof of pregnancy; but there ſtill remain to be conſidered ſome circumſtances in the conduct of lady Jane and Sir John Stewart, on which great ſtreſs is laid by the purſuers, and by the Lords of Seſſion who are againſt Mr. Douglas. They aſk, Why did they go to Paris? Why did they wait ſo long after that reſolution was taken? and, Why conceal this reſolution from all their acquaintance? and, Why did they leave the maids behind?—Theſe are the moſt important points in the preſumptive evidence of the purſuers, and certainly

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\* “ I have received your dear letter, which has quieted my uneaſineſs a great deal on  
 “ account of not knowing any longer where you or my dear lady nor my dear little chicken  
 “ were; I do not expect to hear from you again, as I was ſix months without any accounts  
 “ of you. — I am very ſenſible of my lady's goodneſs for me; I embrace her with all my  
 “ heart, as well as the dear little gentlemen, particularly my deareſt chicken, whom I will  
 “ never forget. I preſent my profoundeſt reſpects to Mad. Hewit. As your place of abode  
 “ is not yet fixed, I will pray God to inspire you with a reſolution of returning to Rheims.  
 “ If this ſeparates you from your country, it will bring my dear little chicken to his, he is  
 “ a little Frenchman. If I have the happineſs to ſee you again, I ſhall be at the height of  
 “ my joy, &c.”

deserve the attention of every one who wishes to investigate the truth.

The defender may justly complain of the difficulty he is under, in being required to account for the actions of his parents at so great a distance of time. The motives of our conduct are often so slight and transient, that we are apt to forget them ourselves in a few years. How then can we attempt to enter into the hearts of other persons, and assign them motives, which they never avowed?

The writer of these papers is very sensible of this difficulty. He does not pretend to speak with certainty; he only flatters himself, that he can account for this conduct in a more satisfactory manner, than the pursuers have done. They impute the whole to a design of supposing children. Had there been one positive circumstance of proof, that the children were supposed, the writer of these papers would have gone into their reasoning. But at present this is a mere *petitio principii*. There is no proof, that the children were supposed; and to impute any actions to a cause, which is not known to exist, is in all cases as contradictory to common sense, as it is revolting to humanity in this attack upon an orphan.

In making our enquiry we should pay a due attention to the reasons assigned for this conduct by sir John Stewart and the family. If these reasons can be vindicated, and rendered probable, we have no right to indulge ourselves in the search of new ones.

The first question is, Why did they go to Paris?

The reason uniformly assigned by sir John, lady Jane, and the family, is, that they were told there was better assistance at Paris than at Rheims.

The pursuers have examined a great many persons to prove, that there was sufficient assistance for lying-in women at Aix<sup>a</sup>, Liege<sup>b</sup>, and Rheims.

In the way these questions are put, they must have produced the same answers from an assembly of Hottentots. The fact speaks for itself. Wherever it pleases the Divine Providence to continue the race of mankind, there are all the means necessary for their continuation. But after all, midwifery is still reputed a science among us Europeans; and there are frequent instances of women, who with considerable expence and trouble change their abode in the last months of their pregnancy for better assistance. This case is  
so

P. P. 16. E.

— 68. L.

Serv. 12. A.

D. P. 251. G.

Serv. 19. F.

Min. 6. K.

<sup>a</sup> P. P. 174. K.

— 175. I.

<sup>b</sup> — 176. F.

— 177. B.

— 177. G.



so common amongst people of fashion, that there is nothing surprising in the conduct of lady Jane, provided she could afford the expence of the journey. We need not even suppose any thing to the disadvantage of the practitioners at Rheims; for sir John Stewart and lady Jane were strangers, and might have been influenced by false reports. So that the pursuers are mistaken in their attacks, and the evidence they produce is foreign to the purpose.

In reality, the art of midwifery is in no degree of credit in the provincial towns of France; and to come to Rheims in particular, exclusive of the certificate from the gentlemen of the faculty, who produce their bonnet de docteur as a proof of their merit, just as a Capuchin would produce his hood, the proof amounts to thus much.—Monf. Florent. Andrieux, who is in trade, is contented with the assistance at Rheims—Mad. Negrette—Le Chevalier Douglas—Mad. Maillefer—Mrs. Leslie, who are people of fashion, are non-content. The whole difference about the journey to Paris, is only this; that, whether lady Jane went or staid at Rheims, in the one case she had done right, and in the other she had not done wrong.

D.P. 373. D.  
— 376. D.

— 66. c.

— 37. F.

— 39. D.

— 149. A.

2d. Question, Why did they wait so long at Rheims, after the resolution was taken to go to Paris?—and, Why conceal that resolution when taken?

There is no direct answer to this question in the proof, because the proof was taken before the presumptive argument was formed. However, it is urged with great assurance in the memorial and in several places of Almon's book. In answer to all this, the writer of these papers thinks it plain from many circumstances in proof, that they did go to Paris as soon as the resolution was taken; and at the time, when it was rationally believed lady Jane could very well support the journey.

Mem. pt. 2.  
P. 71.

In order to deduce the time of this resolution from circumstances, we must look back a little on what has passed. The chevalier Douglas says, he advised sir John Stewart at Liege to conduct lady Jane to Paris, rather than to Rheims; and that sir John said, he was inclined to do it, but that he was afraid he should want money. It should be remembered, that sir John had not at that time relinquished his plan of settling in Switzerland, as soon as lady Jane was delivered; and he certainly had not money enough to enable him to undertake both journies. However, his answer, that he was inclined to do so, agrees exactly with the account of the credit lady Jane had taken upon a banker at Paris, “où elle ne passera (peut-être) pas.” This advice of the chevalier

P.P. 39. v.



Douglas made so much impression upon sir John, that he told Mr. Hepburn of Keith he would go to Paris, not as a pretence for leaving Liege where he never meant to stay, but in consequence of a transient persuasion that it was right. However, he soon changed his sentiments, and went on to Sedan. Had sir John said he would go to Paris, and gone secretly to Rheims, one might have supposed there was something to be transacted in secret at Rheims. Had he said, he would go to Rheims, and gone privately to Paris, we might have guessed there was a plot to be executed at Paris. But all this was said and done openly before all their friends, and appears in the deposition of Mr. and Mrs. Hepburn, who were never desired to keep it secret. It cannot be imagined, that he had any intention of going to Paris at the time he set out for Sedan. There is no mystery in this conduct, nor any crime, unless we suppose it a crime to change one's mind. That they continued for some time in the resolution of remaining at Rheims till after the delivery, is very certain.

P. P. 157. D. It has been seen, that though their intention on leaving Aix was to have gone to Geneva, yet that they even then had some thoughts of being obliged to stop at Rheims till after the delivery. At Liege, where lady Jane had appeared to every person very far gone with child, they seem to have been still more confirmed in this belief; and by the time they arrived at Rheims, they certainly had given up thoughts of going further. Thus on the 8th of June 1748, the very day after their arrival at Rheims, they take lodgings at Hibert's by the month, as appears from Mr. Hibert's household-book.

— 572. K. In sir John's letter to lord Crawford the day after, viz. the 9th of June, he says, " I would be much wanting in duty (knowing the  
 " interest you take in lady Jane's welfare) if I did not acquaint  
 " your lordship with her safe arrival here yesterday; her liking  
 " the place, with some other reasons against fatiguing journies,  
 " have determined her making halt for some time, where no one  
 " thing could contribute more to her ladyship's satisfaction and  
 " happiness, than to know from dear lord Crawford's self, that he  
 " is well, &c. We flatter ourselves, if the peace goes on, with  
 " some hope of seeing you in your way to Barege, should it be  
 " needful, or rather to being diverted after your innumerable  
 " fatigues of war, &c."

— 519. A. By the excerpts produced from Mr. Andrieux's books it appears, that on the 10th of June they received from Mr. Andrieux no less than a hundred and thirty bottles of wine, which was a  
 sufficient



sufficient provision for them for near two months. It is absolutely impossible, that they would have invited lord Crawford to come and see them, or that they would have taken lodgings by the month ; and that they would in their circumstances have laid in so much wine at a time, when lady Jane appeared to every person eight months gone with child, unless they had intended at this time to remain at Rheims.

That they were advised to go to Paris, is also in evidence. Isabel Walker says, “ That Mrs. Andrews (Andrieux) told the Min. 6. L.  
 “ deponent some time after lady Jane was gone to Paris, that  
 “ sir John or lady Jane had asked her, if there were persons of  
 “ skill there : to which she answered, that there were none of  
 “ great skill ; and that people of better condition, if they thought  
 “ themselves in danger, either went to Paris, or sent for a per-  
 “ son from Paris to attend them : and Mrs. Andrieux also said,  
 “ that she had told them, that those who wanted to be frugal,  
 “ or to save their money, went there privately themselves, rather  
 “ than send for one ; and the deponent believes, that lady Jane  
 “ changed her resolution upon hearing, that there were not per-  
 “ sons of skill in Rheims.”

Mrs. Hewit understood no French, and therefore could not P.P. 251. L.  
 converse with Mad. Andrieux ; but she tells us a conversation, that  
 passed in her presence between lady Jane and Mad. Andrieux two  
 or three days after the family came to Rheims, as it was after-  
 wards explained to her by lady Jane.

She says, that lady Jane did at this time inquire of Mrs. An- — 251. G.  
 drieux, what assistance could be procured at Rheims for her de-  
 livery ; and was answered, that they were ignorant as brutes in  
 that respect ; and that she, Mrs. Andrieux, had one child, in  
 the birth whereof by their unskilfulness she had contracted a dis-  
 ease, which rendered her incapable of having more children, and  
 had ruined her constitution ; and therefore she advised lady Jane  
 to have nothing to do with the people of Rheims upon that oc-  
 casion.

The first speaker in Almon's book is said to have given the fol-  
 lowing account of this part of Mrs. Hewit's deposition : (a) “ By  
 “ way of excuse for their leaving Rheims, where they might have  
 “ had the best assistance (What ! better than at Paris ?), Mrs.  
 “ Hewit has told us the wonderful story of a lady, (whom she  
 “ would have us believe was Mad. Andrieux, though it is clear  
 “ it was not she) giving lady Jane the advice to leave Rheims on

(a) Lord President.

“ account

“ account of the unskilful practitioners there ; and this story, according to Mrs Hewit, was told to lady Jane about the 6th of June.”

Why say, that Mrs. Hewit would make us believe it was Mad. Andrieux, when she says it positively five times ? Why say, that the story was told according to Mrs. Hewit on the 6th of June, when she says expressly it was two or three days after they came to Rheims ? And there is written proof, that they arrived at Rheims only on the 7th ; which was the first day that lady Jane ever saw Mad. Andrieux.—*Hæ tibi sunt artes.*

None, but a very zealous advocate for the pursuers, would have levelled his logical shaft at Mrs. Hewit in this place ; for here certainly her honour is above suspicion, because it appears she was not the only person, to whom lady Jane told the same story. This is in proof by a witness, of whom the gentleman above-quoted is said to have made great use ; to whom therefore he cannot object, though it may be matter of general doubt, how far her testimony is admissible.

The writer of these papers is sensible of the necessity of admitting a second-hand kind of evidence in this cause, which came on so many years after the facts, on which it depends, had past, and when many important witnesses were dead. But a witness at third-hand, who comes to tell us what was told by a dead person, who had it from another dead person, who was present, seems hardly to be admissible. Circumstances vary so much in passing through different hands, that were the whole of this cause related by such persons, the whole would be discredited, and we should never see any one point on which we could fix.—The witness, of whom we are now speaking, is the honourable Mrs. Primrose. She herself knows nothing relative to this process, nor has she conversed with any one who did ; but she says, “ That some time after lady Jane Douglas came into Scotland with the children, she came in a forenoon-visit with the children to lady Stair’s, the deponent’s mother : that on this occasion, lady Jane called lady Stair into another room, and the deponent was told by lady Stair.” It should seem, that lady Jane came to complain to lady Stair of the injuries she had received at Douglas-castle. Were both these noble ladies alive now, one should imagine, that what lady Jane might have said in pleading as an advocate in her own cause, would never be admitted without some corroborating circumstance, in contradiction to what she would have sworn with the strictest precision of a witness upon oath ; nor can we imagine, that



that lady Stair, a lady of the strictest honour, who, it seems according to this witness, was enjoined secrecy, would communicate any material facts with which she had been trusted. However, it seems, she did indulge her daughter's curiosity in some points, but in none but what sir John Stewart, Mrs. Hewit, and Isabel Walker have told from the very first. So that this witness is not introduced to say any thing, which would be unknown without her help; but only to relate what was known before in a different manner, and with such rhetorical embellishments as it would naturally acquire, as it passed in a conversation between persons little interested in the real state of facts; in order to discredit, by this variation, what is deposed upon a surer cause of knowledge by Mrs. Hewit and Isabel Walker.

It is time now to hear the witness, since the court with great indulgence has admitted her.

Miss Primrose deposes, “ That lady Stair told her, that lady P. P. 68. 12  
“ Jane told her, that she intended to have lain in at Rheims,  
“ but that the morning that she came there, there was a lady of  
“ that place that desired to see her; to which lady Jane sent  
“ answer, that she was so fatigued she was still in bed, and could  
“ see nobody; the lady sent word, that it was a matter of conse-  
“ quence she had to tell her: upon which she was admitted.  
“ She begged pardon for intruding, and said it was a matter of  
“ conscience; she heard she had come there with an intention of  
“ lying in, and that she was obliged to tell her that there was  
“ nobody in that town that was capable of doing the office of  
“ midwife: lady Jane said, that she had sent away her coach,  
“ and her finances were too low to proceed farther; but that  
“ the lady's arguments were so pathetic, that she persuaded her  
“ to take a post-chaise, in which lady Jane and Mrs. Hewit went  
“ to Paris, as the deponent thinks, that day, but cannot be  
“ positive.”

It is plain, that this is at the bottom the very same account to which Mrs. Hewit and Isabel Walker have deposed; and that in reality it scarce contradicts them: yet it is embellished with many adventitious circumstances of idle talk, which nobody can believe. It is plain too, that this is the wonderful story of a lady, which the person quoted before has been made to father upon Mrs. Hewit, and for which he has abused her. He has not mentioned Miss Primrose's name here, but he cites her soon after as the single evidence of lady Jane's falsehood, with which he parades through two pages on her authority; of this we shall see more in the last part of the proof.

We see then, that lady Jane's conversation with Mad. Andrieux is established upon the best evidence the case will admit of at this time, when both the parties are dead; for it is reported in proof by two witnesses, who received their information severally and independently from each of the persons concerned; it has also found its way from lady Jane to the court by a third channel, distinct from either of the former.

D. P. 66. B. But the learned person above quoted is still made to say, that it is clear it was not Mrs. Andrieux. It is difficult to guess upon what assurance he says this. As the account stands uncontradicted in the proof, we must look for his reasons in the pursuers memorial. There it seems Mr. Florent Andrieux is quoted. Mr. Florent Andrieux has said, "That he never heard, that his mother advised Mad. Stewart to go and lie in at Paris." This is very credible. Mr. Andrieux was in trade. The advice was invidious: and Mr. Florent Andrieux was then a boy of nineteen. But what weight can this have against the positive testimony of those, who swear she did give that advice? Mr. Florent Andrieux has said too, — 65. E. that his mother did not observe the pregnancy, before she was told of it by lady Jane; at least his mother never told him, that she did. This may be true too, and yet Mad. Andrieux may have had all the necessary opportunities of knowing whether what was told her was true or false, and doubtless she had them. After all, the propriety of this advice does not depend upon the personal observation of the pregnancy, which Mad. Andrieux may be — 64. F. presumed to have made. Mr. Florent Andrieux has said, that his mother never doubted of the pregnancy or birth; and the same conviction, which induced her to assist lady Jane in the purchase of child-bed linen, and to stand godmother to Mr. Douglas, would engage her to give this friendly advice, if it was wanted; though she might have had good reasons to wish, that the people of Rheims should not be informed of what she had said.

In Almon's book, p. 190, may be read, "There is not the least evidence of the story told both by lady Jane and Mrs. Hewit, concerning the advice given her by an unknown lady to leave Rheims on account of the unskilfulness of the practitioners. Mrs. Andrieux never gave her any such advice, for it appears that she never took her even to be pregnant." It is difficult to say, what this person would call evidence, if he be dissatisfied with the evidence of this fact. All the assertions in this passage have been already proved to be mistakes, and the deduction from them inconclusive. The words are quoted as an instance



stance of the miserable effects, that follow from inattention to the evidence, and prepossession in favour of a great authority. We have here the story of the unknown lady charged a second time upon Mrs. Hewit, with one additional circumstance ; Mrs. Hewit is now become an original witness distinct from lady Jane ; which this learned person might have known was impossible from almost every page of the proof.

## S E C T. XVIII.

*Of the time, at which lady Jane went to Paris.*

**T**HE first advice to go to Paris was given to lady Jane, according to Mrs. Hewit, two or three days after they came P.P. 251. L. to Rheims, that is, on the 9th or 10th of June. If this then was the advice which prevailed, why did they not go to Paris directly ?

As Mrs. Hewit here speaks in general of two or three days, this ought not to be understood in a very limited manner ; very probably instead of two or three days, it may have been seven or eight days after their arrival. Mistakes of this kind are to be found in every deposition in this process. In the same manner she says, they arrived at Rheims from Aix about the middle of June ; though it appears they arrived the 7th. But in order to fix the time when this advice was given, and the resolution of going to Paris taken, with as great precision as possible, we must have recourse to conjecture ; but this conjecture will be founded upon real fact. It appears in proof, that lady Jane was very far from being of a timid or hasty disposition. She was willing to lie-in any where, at Bedbour, or at Bruffels ; and she came from Aix with a prejudice in favour of Rheims, as a place where she might securely lie-in, before she went to Geneva. The chevalier Douglas had warned sir John against Rheims, but his advice had made no lasting impression ; and they had since been at a considerable expence and trouble in direct opposition to it. We may very well therefore allow some time for reflection, after this advice was given the second time ; an advice, after all, rather founded on prejudice than judgment. Add to this, that the expence of the journey to Paris would entirely defeat the intended settlement at Geneva, which they had not relinquished on the 9th of June. It is probable therefore upon the whole, that when lady

P. P. 66. F. Jane and fir John had been some-time at Rheims, they began to like the place, and intended to settle there, as lady Jane wrote to lady Charles Kerr. They could then afford the journey to Paris, to which they were before inclined, and to which they had been advised, and to which they had never made any objection but the expence.

D. P. 64. c. Mr. F. Andrieux has not any determinate recollection of the length of time Mad. Stewart spent at Rheims in this first visit. There is no kind of doubt, but Mad. Andrieux was amongst the first persons informed of the resolution of going to Paris. But the first account of this resolution which appears in proof, is in the depositions of Mr. Mackenzie and Mademois. Sautrez. Mr. Mackenzie thinks, he was told of this intention about a week before they set out; and Mademois. Sautrez dates her information the evening before Mr. Mackenzie.

— 54. B.

— 53. E.

P. P. 163. c.

Mr. Querangal, clerk at the custom-house, to whom fir John applied for the recovery of his trunk, which had been detained at Torcy, containing his table and bed-linen (saying he had the more need of it because his wife was with child) says, he advised Mr. Stewart to write to the farmers-general for an order to have it sent to Rheims, which he did; and that Mr. Stewart called several times afterwards to know, if the answer from the farmers-general was received: the answer came on the 19th of June: and Mr. Querangal afterwards says, that three or four days before the departure of Mr. and Mad. Stewart for Paris, they came to him, and asked him, if it was necessary to seal, or take any other precaution in order to transport their trunks to Paris; where Mr. Stewart then said, Mad. Stewart was going to be brought to-bed.—From this deposition it should seem, that the resolution of going to Paris was not taken, till after the arrival of the order from the farmers-general on the 19th of June.

Mademois. Sautrez says, she was told of their resolution to leave Rheims upon a Tuesday; and as it appears from the letter to lord Crawford and the deposition of Querangal, that they had not come to the final resolution of going to Paris till after the 19th of June, it must have been Tuesday the 25th of June when Mademois. Sautrez was told of it, and that she carried home the gowns said to have been altered by her on Friday the 28th.—So, that they made no unnecessary delay in going, after they resolved to do it; having gone by the first coach, viz. on Tuesday the 2d of July.

The



The incident too of the want of their trunk, detained at Torcy, for the delivery whereof an order arrived on the 19th of June, which was immediately sent on to Torcy, might have inclined them to wait as long as possible.

They set out at last without it; and lady Jane supported the journey very well. The time was neither too soon, nor too late. It should be remembered, that lady Jane during her journey to Rheims had felt the effects of that periodical complaint, which sometimes releases a child from its mother's womb at what is usually called the end of seven months. When these were happily passed over, there was the less danger of a premature birth; and it became probable she would bear her child its full time. A near examination of the proof of the pregnancy will shew, that lady Jane had mistaken a few days in counting her months; and did not expect to be delivered so soon as July the 10th.

If we look back to the earliest proof of pregnancy, we shall find, that it was not observed with certainty by Mad. Tewis till the beginning of November. The first sign of pregnancy, the suppression of menses, is equivocal in persons of advanced age, and lady Jane never spoke of it. When the persons about her had satisfied themselves that she was really pregnant, though it is not to be doubted that they made some allowance for the time elapsed before their observation began, yet it is not probable that they carried their reckoning so far back as the 8th of October, the day on which the pregnancy must regularly have begun in this year, to correspond with the birth on the 10th of July following. D.P. 15. F.

A remarkable paragraph in the premiere plainte already cited — 1021. shews, that the Rheims witnesses, whom Mr. Andrew Stuart consulted, were once of opinion, that lady Jane was not quite so near the time of her lying-in when she went from Rheims, as she afterwards was known to have been.

If we look forward to the day of the birth, we find that Sir John Stewart tells Lord Crawford in the morning of that day, "The happy hour we look for daily." It is plain from Mrs. Hewit's letter to the maids, that she expected nothing so early; and though one cannot well admit the whole account of the honourable Miss Primrose, with all the variations it has unavoidably undergone in passing through so many hands, yet there is some truth at the bottom; for all the persons through whose hands it passed are truly honourable, and the whole turn of lady Jane's conversation P.P. 61. K.  
Serv. p. 34. E.  
D. P. 69. c.

sation with lady Stair serves to shew, that the little ones made their appearance in the world some small time before they were expected.

Let us view every thing, as it appeared to the family at the time, and we shall be led to think, that lady Jane was indifferent about this journey to Paris ; that it was the tenderness of sir John Stewart awakened by the fears and terrors, and perhaps reproaches, of Mrs. Hewit, which prevailed ; and carried them thither at the moment the most suitable to their circumstances, and to their future designs, and in no manner contradictory to the opinion they had rationally formed of the state of lady Jane's health and condition.

It may have been asked en passant, why they concealed their resolution of going to Paris after it was taken ?

As it has been shewn, that the resolution of going to Paris was not taken till after the 19th of June, so it is perfectly clear, that after this time it was freely and publicly communicated to every person. Mad. Andrieux was informed of it immediately, and she told it to her husband and son. Mess. Mackenzie and Maclean were informed of it by sir John Stewart, as were Mr. Querangal and Mr. Macnamara, who were all the acquaintance they had at Rheims. Immediately after their departure, the maids mentioned it to their fellow-traveller, Guenet the notary, to the Mademoiselles Hiberts, whom they met in the street, and to the mantua-maker ; in short, it does not appear, that their journey to Paris, or the intention of it was concealed from any person whatever.

D. P. 376. D.  
P. P. 342. G.

From the depositions of Mr. Gordon of Cowbardy, and of Mrs. Greig, it is plain, that sir John or lady Jane had written to baron Macelligot or lady Wigton, then at Spa, and to Mr. or Mrs. Hepburn at Liege, informing them of their having changed their resolution, and their reasons for it ; and that they were going to Paris. It will be soon shewn that they, and many others, were afterwards informed, that the delivery had happened at Paris. So that the objection of concealment is clearly disproved.



## S E C T. XIX.

*Of the reasons for leaving the maids at Rheims.*

THE last question is, Why did they leave the maids behind them?

This language was first heard, when the family were supposed to have left their man-servant, Pierre Quibel, behind them too. When the logic of the pursuers was put to shame by the discovery of Mad. Quibel, it was hoped this murmur would have ceased. But as long as sir John Stewart appears to have declined any one, whom the pursuers are pleased to suppose he must have wanted, there is nothing to be heard but mystery, suspicion, artifice, and fraud. They treat Isabel Walker as an accomplice. They charge Effy Caw with the guilt of telling lies to save her mistress's credit; and yet when the family drop these faithful associates, and put themselves into the hands of entire strangers, this circumstance is moulded into a presumptive argument of guilt.

Mrs. Hewit says on the service, that the two servant-maids were left at Rheims for want of money to carry them along. Serv. 12. A.

Isabel Walker deposes, that when sir John and lady Jane went to Paris, the deponent and Effy Caw were left at Rheims; that the reason thereof was lady Jane's being scarce of money; and that Mrs. Hewit told her after her return from Paris, that all the money my lady and sir John had, was but a single louis d'or, when they arrived at that city. — 19. F.  
— 20. G.

It is needless to transcribe all the high and angry words, which appear in the pursuers memorial, and in Almon's book. This is one of those questions, which have really embarrassed more than one candid and moderate inquirer, and therefore it deserves a serious answer.

But first the writer of these papers begs leave to refer to some of the pursuers witnesses, of whom he thinks they have made no use. They are some Scotch ladies, who are brought in to relate Mrs. Hewit's conversations at second-hand, and have made her say, that she was not present at the birth. But as this was too glaring a mistake to admit of support, no appeal has hitherto been made to their testimony. Yet they are all women of credit, who would not willingly tell a falsehood; and the writer of these papers believes, and flatters himself, these very ladies do by this time believe

P. P. 70. 1. believe too, that Mrs. Hewit did really speak of the maids at the  
 — 71. E. time she is reported to have been speaking about herself; and that she told Mrs. Cant in 1758, and Mrs. Carse much earlier, in 1753, that the maids were left behind for want of money.

This is then no recent excuse extorted from her at a cross examination, but the constant language of the family, which they never dissembled. Let us next see, whether it be true.

Serv. 12. B. Mrs. Hewit has deposed, that when they came to Paris, they  
 — 20. G. had but one louis d'or: and Isabel Walker says, Mrs. Hewit told her this very circumstance at her return from Paris in 1748. This fact is never contradicted in any part of the proof; yet a speaker in Almon's book p. 85 (a) has been made to say, that it is positively proved to be false. A man of less authority will hardly venture to speak so positively.

P. P. 534. E. For, his reason for asserting that they had more money in their pockets is, because they had credit at Paris. It has been already mentioned, that Sir John had credit on Mess. La Veuve Taffin & Fils for 1979 livres five sols, and it is probable that this credit was negotiable at Rheims; or at least Sir John might have borrowed a small sum of Mr. Andrieux; but he had very good reason for doing neither.

Mr. Andrieux was but a late acquaintance, and Sir John was unwilling to use his credit with this gentleman without the most pressing necessity. We shall see in the next part, that he had not all the money he really wanted for the expence of lady Jane's lying-in; and the method he took to procure more was certainly preferable to borrowing. He thought he should have credit enough, when he presented the letter of Mess. Khar to the Paris bankers, to engage them to advance a sum of money, which would soon become due to him, upon the allowance of the usual discount. This he could never have attempted, had he negotiated the letter of credit at Rheims: so that in reality to negotiate the credit at Rheims, was to lay himself under the necessity of borrowing money of Mr. Andrieux; the very thing he wished to avoid. He did indeed apply at last to Monsr. Andrieux, but it was not till the Taffins had refused his offer.

This agrees with what Isabel Walker says lady Jane told her; that she expected some money on their arrival at Paris, and that the deponent and Effy Caw should be sent for. This money could not be that for which they had credit, of which they were

(a) Lord President.

sure;



sure; but was doubtless the further sum they expected to draw in advance from the Paris bankers.

But after all the learned person (whom one is sorry to quote so often) thinks it strange they should not have money to carry the maids to Paris, “when it is clear they might have been transported thither for the poultry sum of twelve shillings.” He means, if they had travelled on the outside of the coach. But what will he say, if it should appear, that these girls (who appear notwithstanding to have been very honest good girls) had no mind to travel on the outside of the coach; and that lady Jane was willing to indulge them; and yet if we look a little backward, we shall see that this was the case.

Mrs. Hepburn of Keith deposes, “that Effy Caw and Tibby Walker set out from Liege to Sedan in the basket; that they were very displeased at going in the basket; that lady Jane reproved them with great warmth, and asked them, how they dared complain of any thing, when they saw their mistress reduced to that machine.” D. P. 339. G.

Here is plainly a quarrel between lady Jane and the maids; and though the maids complied in this instance, as probably there was no room for them in the carriage, yet in the end they proved victorious; for in the next journey from Sedan to Rheims, it appears by Mons. Guenet’s deposition, that they were admitted into the coach. P. P. 151. K.

It may be asked, What has this to do with the journey to Paris? The writer of these papers thinks it has; because when once the maids had carried their point, and taken their places in the coach, they would be very unwilling to return again to the outside.

But of this too there is evidence, which is but once removed from positive proof. It is the deposition of the honourable Miss Cranston. This young lady is precisely in the case of lady Chesterhall and Mrs. Janet Cant, who has been quoted before. She is brought to depose, that Mrs. Hewit had said she was not present at the birth of Mr. Douglas: she mistakes the person, and relates the fact; and it is not to be doubted, but by this time she would be ready to own, where her mistake lay.

Miss Cranston deposes, “that she was present at a conversation between lady Mary Hamilton and Mrs. Hewit: that, to the best of this deponent’s memory, Mrs. Hewit said, that lady Jane, sir John, the servants, and Mrs. Hewit, were at an inn, — 69. K.  
“where

“ where lady Jane proposed to be delivered ; but that the mistress  
 “ of the inn represented her house as an improper place for that  
 “ purpose, as there was no right assistance to be got, and advised  
 “ lady Jane to go to some other place without delay : upon which  
 “ lady Jane sent to take places in a carriage, which held a num-  
 “ ber of passengers, in order to take seats ; but that there could  
 “ only two seats be got : that Mrs. Hewit said, that there was a  
 “ place before the carriage for common passengers, and that lady  
 “ Jane had desired Mrs. Hewit and a woman-servant would take  
 “ their passage in that place ; but that Mrs. Hewit and the ser-  
 “ vant refused to go in there : that thereupon lady Jane and sir  
 “ John went away in the carriage, and left Mrs. Hewit and the  
 “ woman-servant behind ; and as the deponent thinks, but is  
 “ not positive, Mrs. Hewit said, that she came up with lady  
 “ Jane next day ; but that before she did so, lady Jane was  
 “ brought to-bed. And being asked, whether it was not Tibby  
 “ Walker and Effy Caw, whom Mrs. Hewit said were left be-  
 “ hind ? depones, that she did not know that lady Jane had two  
 “ women with her besides Mrs. Hewit ; but still thinks, but is  
 “ not positive, that Mrs. Hewit said, that she herself was one of  
 “ the persons left behind.”—One may venture to say, that by this  
 time the young lady has changed her mind. This is a strong  
 proof of the necessity of receiving hearsay evidence with very great  
 caution. The writer of these papers dares not suspect this lady  
 of telling wilful falsehoods ; but as she was only present, as an idle  
 observer of what passed between two other persons, on a subject,  
 in which she took no part, her testimony is very inaccurate : yet  
 we see in this deposition some little trait of almost every particu-  
 lar, to which the best informed witnesses have deposed. Here is  
 the quarrel—Mad. Andrieux’s advice—somebody left behind, who  
 would have come in time if possible—lady Jane brought to-bed,  
 before she expected ;—and (we shall see presently) no room in the  
 coach. All these are true circumstances, but miserably disguised  
 and deformed. Let us try to restore them to their true propor-  
 tions. The quarrel happened at Liege, or Mrs. Hepburn would  
 not have known it. The maids carried their point on the road  
 from Sedan, as Monf. Guenet has deposed. They were left be-  
 hind at Rheims. The writer of these papers does not know, if  
 any proposal was made to them at Rheims of going in the basket  
 to Paris, as neither Mrs. Hewit nor Isabel Walker have mentioned  
 it ; yet he pays so much deference to Miss Cranston as to believe,  
 that Mrs. Hewit may have said, that lady Jane would have spared  
 some little from her own convenience to have taken them in the  
 basket,

P. P. 70. D.



basket, had she thought they would have gone willingly; but that after what had passed at Liege (which the witness has by mistake dated at Rheims) she chose rather to keep them in good humour, and promise to send for them, when she had more money.

But why, it may be asked, did they not now go in the coach, since the difference was only about nine shillings? The answer is ready; Because this difference was very considerable to those who had only twenty-one shillings in their purse, and who did not know what their personal expence between Rheims and Paris might be; and because, as Miss Cranston has said, there was no room in the coach; I mean, at last; for before lady Jane had paid her bill at Hibert's, she could not know what she could afford; and for this we appeal to Mad. Vatry.

Mad. Vatry has deposed, that she took two places, one for herself, and one for her maid: that there were besides in the coach a foreign gentleman, and two foreign ladies, Mad. Audry, and three other persons, in all nine; \* “et que la forme du carosse en question étoit oval, qu'on appelle gondale, contenant 10 personnes.”

P. P. 166. L.

— 167. A.

— 169. H.

By the bye, this is an invincible argument against the pursuers hypothesis, that Isabel Walker was an accomplice, and Effy Caw the dupe; and that Walker was left behind only to avoid jealousy and mistrust. Had this been the case, no fairer offer of separating them could ever present itself than the present; and lady Jane might have had the service of the person she trusted without suspicion, for there was precisely room for one, and not for both.

Mem. pt. 2.

P. 109.

To return.—Since the maids could not go in the carriage with lady Jane, it only remained for them to follow in the next voiture. But then it was impossible for lady Jane to divide the little pittance of cash she had in hand, so as to provide against accidents, which might happen to herself, and leave sufficient for their journey: so that the old and true reason returns upon us, and the maids are still detained for want of money. Let the pursuers twist this conduct into every shape they please, they can never contrive to carry the maids to Paris without borrowing money at Rheims, or waiting till money was received at Paris.

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\* “And that the form of the coach in question was oval, which is called Gondale, and contains ten persons.”

The writer of these papers has endeavoured to trace out the motives of lady Jane's and sir John's conduct in this transaction, by supposing himself in their place at the moment each resolution was formed. A slight change of circumstances will often occasion a change of conduct, which may have appeared of little moment at the first, and be productive of important consequences in the sequel. It is not necessary to prove, that sir John and lady Jane did the very best things they could possibly have done: it will sufficiently appear, that they had no ill design, if their conduct is found uniform and consistent; and if it is such as may very well be derived from honest principles, and from such a degree of human prudence as does ordinarily govern the rest of mankind in their domestick concerns, more is not required.

In support of the foregoing reasoning, besides the oath of Mrs. Hewit, who specifies the exact sum the family possessed in hand at this time, several facts are ascertained, which were nearly connected with the circumstance of leaving the maids behind—the quarrel—the coach having but one vacant place—the money lent by Mr. Andrieux—are points proved by unexceptionable witnesses; and afford a reasonable ground for conjecture and probable proof. The defender is not bound to perform impossibilities. The pursuers perpetually remind us, that a probable evidence is all that can be expected; and this they extend to matters of fact, which is certainly unreasonable, for matters of fact are capable of positive proof by letters and by records at any distance of time; but matters of opinion, and the private motives of the conduct of persons deceased, can only be investigated by probable proof. If the actions of sir John Stewart and lady Jane can be fairly and consistently deduced from the motive they have assigned for those actions, there is high probability, that they have assigned the true motive: there is not indeed the shadow of probability, that they have assigned a false one.

## S E C T. XX.

### *Of the journey to Paris.*

D. P. 169. c.

**M**AD. Vatry sat next lady Jane; she deposes, \* “ qu'elle n'a fait aucune sorte d'attention pour sçavoir si cette dame étoit grosse ou non.”

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\* “ That she gave no sort of attention to know, whether the lady was with child, or not.”

Mad.



Mad. Fevre says, † “ qu'elle ne s'est point apperçue d'aucune  
 “ apparence de grosseffe dans cette jeune dame pendant le voyage, P. P. 171. B.  
 “ qu'elle n'y a point fait attention.”

Mad. Audry sat at the farther end of the carriage from lady Jane. She deposes, that there was a foreign gentleman, and a foreign lady; ‡ “ que cette femme n'a pas dit un mot de François,  
 “ et la deposante ne se refouvient pas d'avoir vû aucune autre — 172. I.  
 “ femme dans la dite voiture.” It is plain Mad. Audry remembers no other woman but Mrs. Hewit. The pursuers were so zealous, as to put this lady's name into their Condescendance of — 173 C.  
 Facts as a strong witness against the pregnancy. She has happily — 173. H.  
 lived to be heard herself. Mr. Anderson has at page 143 (a) made free with the name of a gentleman, whom the writer of these papers has long learnt to respect, and made him say, amongst a variety of absurdities, that “ these passengers all noted lady  
 “ Jane,” in direct opposition to the testimony of every one of them who has been examined, who have severally declared upon oath, “ that they never noted her;” and this, he repeatedly assures his reader, is stating the facts in the most favourable light for the defender. No. 13.

Mad. Vatry and her maid Fevre both remember, that the strangers retired both at noon and night, when they came into an inn, and never eat with the rest of the company. This is good proof, that they had little opportunity to observe the pregnancy, and that proper attendance was every where paid to lady Jane's condition. P. P. 167. I.  
 — 171. A.

Sir John, lady Jane, and Mrs. Hewit, arrived at Nanteuil on the 3d, and at Paris on the evening of the 4th of July. We have now closed the proof of pregnancy, and conducted lady Jane through the fatigues of that long and tiresome journey, with which the pursuers parade at large. She actually came from Aix to Paris by the way of Rheims in forty-five days, between the 20th of May and 5th of July, in the eighth and ninth months of her pregnancy. She travelled with all the convenience which her reduced fortune could afford, and with such proper intervals of rest, (which

(a) Lord Alemoor.

† “ That she did not observe any appearance of pregnancy in the young lady during the  
 “ journey, and that she gave no attention to it.”

‡ “ That that woman did not speak one word of French, and the deponent does not re-  
 “ member to have seen any other woman in the said coach.”

the pursuers are pleased to call unnecessary delays) that the whole amount of her journey was only at the rate of five one-third English miles a day.—Jane of Albert, a princess illustrious for her masculine understanding and steady support of the Protestant religion, carried the first burthen of her womb from Compeigne to Pau, almost twice as far, in the ninth month of her pregnancy. She presented her little hero at the moment of his birth to the king her father, who carried him from the chamber without the common cloathing of the most ordinary child.—It appears thus easy to justify the most extraordinary conduct of lady Jane by the example of women, whom the whole world admires.

## S E C T. XXI.

*General remarks on the pregnancy and conduct.*

Conclusion.

**W**E must finish this examination with one general remark on the proof of the pregnancy, and another on the conduct of the parties.

Pregnancy.

If the writer of these papers has not miscounted, there have been examined in Aix, Liege, and Rheims twenty-six witnesses to the pregnancy, besides two ladies who observed the symptoms of pregnancy, but candidly imputed them to other causes, because they did not know lady Jane was married. Of these persons no less than sixteen speak entirely from their own observations, made before they had been told that lady Jane was with child, and most of them before they knew she was a married woman.

Had lady Jane owned her marriage, the pregnancy would not have been observed by three persons, before it had been told over all the town. Had a meaner person than lady Jane laboured under the same suspicion, the scandal would have been whispered from ear to ear; and no witnesses would have appeared, but prejudiced and malicious spies. But such was the singular situation of lady Jane, that the deference to her rank, and esteem for all the other parts of her conduct, made these accurate observers hold their tongues, at least so far as never to mention their knowledge, except in confession; and by this means we have a greater weight of credible testimony in favour of the pregnancy, than perhaps any other woman in the world is able to produce.

P. P. 490. A.

If we examine, what these witnesses say, scientifically, we find every circumstance regularly attested, from whence Dr. Young collects that full proof, which would enable him to declare a wo-  
man



man pregnant without hesitation; the suppression of menses attested by attendants and Mrs. Hewit; the sickness and vomiting by seven or eight witnesses; the belly gradually increased is mentioned by more; and in particular the two marks, which can't possibly be imitated, the swelling of the breasts and perceptible motions of the belly, which can rarely be attested by any other than servants, have in this case the additional sanction of the oaths of Mrs. Hepburn of Keith and Mad. Tewis, two witnesses altogether above suspicion, to confirm all that the servants have sworn.

The pursuers take care to observe, that lady Jane never consulted any physician or surgeon during the course of her pregnancy. Indeed there is no proof, that she did; and we are ready to join in the consequence drawn from this omission, and believe, *D.P. 29. F.* that none was wanted. It must be remembered however, that Mad. Tewis assisted lady Jane in a medical capacity during her residence at Aix. We may therefore conclude this remark in the words of Mr. Andrew Stuart, who has acknowledged, *That he D.P. 164. G.* had all the proofs in the world of lady Jane's pregnancy.

In opposition to this strong proof of pregnancy, the pursuers have had the good luck to find a gentleman and lady of strict honour, who saw lady Jane in the fourth month of her pregnancy, and who never thought she was with child, because she concealed being married; one old gentleman who saw her a few days; one boy of nineteen, who saw her twice; general Maclean, who remembers little or nothing; the two girls at Hibert's, who would not see what they might have seen, and who with Mad. Sautrez are proved by the *Premiere Plainte* to be very suspicious witnesses; *Monf. Guenet* and two women, who travelled with lady Jane, when she was so dressed, that it was impossible to see her shape in all eleven persons; every one of whom, at the same time that they say they did not observe her pregnancy, add—because they paid no sort of attention to know, whether she was with child or not; and that, when they heard afterwards of her being brought to bed of twins, had not the least doubt of the reality of the birth. This is the negative proof, which some persons in Almon's book affect to believe before Mrs. Hepburn and Mad. Tewis, who produce the most unexceptionable causes of knowledge in support of what they attest, and before sixteen witnesses of such attention and skill, that they discovered the pregnancy, when much pains was taken to conceal it.

With respect to the conduct of the family during the time of *Conduct.* the pregnancy, so much has been said on each part of it, that  
a short



a short recapitulation will suffice.—The following facts compose the whole state of the conduct: 1st, Lady Jane concealed her marriage out of fear, till she had acquainted the duke her brother of it; and she was at all possible pains to conceal her pregnancy, on account of her passing for an unmarried woman.—2d, Though it is said, Paris was the only place where the pretended fraud could be compleated, yet lady Jane's pregnancy was universally observed at Aix; the duke of Douglas, Mr. Douglas of Eddrington, and Mr. Colvill were informed of it in Scotland, at a time, when on account of the war then subsisting between France and Britain there was an utter impossibility of her getting to Paris.—3d, That when lady Jane was obliged to leave Aix on account of the narrowness of her lodgings, and the concourse of people of fashion then there, to whom the marriage had never been owned, they resolved to settle at or near Geneva; for which purpose sir John applied to lord Crawford to procure them passes, borrowed his lordship's servants and horses to accompany them thither, which were sent to them; desired his lordship to send his watch to him to that country, and applied to his banker in Holland for a credit there: all which is absolutely inconsistent with the scheme of a fraud, which it is said could only be committed at Paris.—4th, That lady Jane apprehensive of taking this journey, and being detained some time at Aix longer than she expected, by the difficulty of getting passes, and the badness of the weather and roads, formed several expedients to avoid both the expence and inconvenience of lying-in at Aix, where she had never owned her marriage: in the first place she applied for the use of the castle of Bedbour to lie in at; but as that could not be obtained without writing to Vienna, which would have been attended with too long a delay, she was willing to have lain in at Brussels in the house of Mad. Negrette her friend; and offered to go and settle with lady Wigton, at any place her ladyship pleased.—5th, That when they at last set out for Geneva, they found that lady Jane could not in her then situation make out so long a journey; upon which they resolved to remain at Rheims, a place upon the direct coach-road to Geneva, till after the delivery; hired lodgings there by the month; and requested lord Crawford to visit them on his road to the waters of Barege.—6th, That some time after this, they were advised to go to Paris, on account of the unskilfulness of the accoucheurs at Rheims.—7th, They left both their maid-servants at Rheims, one of whom is said to have been, and certainly was an accomplice in the fraud, if any was in agitation; and what is still more wonderful, they had just money to have carried



ried this person, whom the pursuers now say was the accomplice, along with them, and not the other; and there was a place for her in the coach, but not for the other, which was the fairest opportunity possible of carrying the pretended accomplice along with them, and getting rid of the other.

If the pursuers can produce a single instance of a woman since the creation, acting in the above manner; concealing her marriage and pregnancy at the time she was carrying on a scheme for introducing supposititious children into her family; informing her brother, and other friends of her pregnancy at a time, when there was no possibility of a prospect of her getting to the place, where alone it is said she could accomplish her scheme; resolving to settle at places, where it was impossible for her to have compleated the imposture; pressing a whole family of her acquaintance and a stranger man-servant to go, and live with her, and be witnesses of her actions, and others to come and see her; and lastly, leaving a faithful accomplice, whom she had trusted with her intention, at a time when she could have carried her with her without the smallest degree of suspicion; and instead of secreting herself at the time of her pretended delivery, going to the house in the world, where a discovery of the fraud could scarcely fail of immediate detection; it will be readily granted that all this was deceit and artifice, and was directed to the accomplishment of a fraud. But if these things never happened before, and could not possibly have happened, if any fraud had been intended; they must afford the strongest presumptive proof that lady Jane was really with child, and that no supposition of children was meant. The length of the journey between Aix and Rheims, the single circumstance from which a presumption that lady Jane was not with child is inferred, is extremely trifling. Every one, who knows the country; or will look at a map of it, will see, that this journey might be made without the least fatigue; and every one, who will read the depositions of the persons, who travelled with lady Jane, will see, that all possible attention was shewn to her on the road. Thousands of women of the first fashion, whose pregnancy was never suspected, could be mentioned, who have performed a much longer and more fatiguing journey than this of lady Jane, at a later stage of their pregnancy.

DEFENDER'S PROOF. PART III.  
OF THE RESIDENCE AT GODEFROI'S AND  
LE BRUN'S.

SECT. I.

*Introductory remarks on the account of the delivery.*

THE history of what passed in this period is very short; the controversy about it very long. One period of the debate relates to the existence of Pierre La Marre and Mad. Le Brun, which has been already examined, and need not be repeated. Another arises from what the pursuers are pleased to call, lady Jane's and sir John Stewart's explanations. To understand this we must remember, that both sir John and lady Jane had frequent occasion to mention the birth of the children amongst their friends in Scotland. The pursuers have picked out some of these conversations, dignified them with a new name, and endeavoured to set them against what sir John and Mrs. Hewit have sworn in court. These will be found in their proper chronological order in the last part of these papers. A third class of objections is formed from what is called, sir John Stewart's obscurity and concealment; but as most of the arguments on this point are applied equally to the conduct of the family at Michel's and at Dammartin, they will be referred to at the end of the next part.

What remains at present to be considered, is the history of the family during the thirteen days residence at Le Brun's, and those objections to it, which arise from the facts attempted to be proved by the pursuers, or from the conduct and character of Mrs. Hewit.

Mem. pt. 2.  
P. 195.

This is the period most favourable to the pursuers presumptive proof. Lady Jane is dead, and cannot answer for herself. They have now got the old folks by themselves. Sir John, they own, was more remarkable for his vivacity, than for his reflection; and at the time of his examination was much impaired by misfortunes, by sickness, and by old age. Mrs. Hewit was from the first but a very imperfect observer, as her total want of the French language deprived her of the best means of knowing what passed with Mr. La Marre, and with the nurses; and she certainly in the year 1763 was decayed both in mind and body. There are  
now



now no lord Crawfords, Mrs. Hepburns, Mad. Maillefers, Mad. Andrieux's, to countenance and confirm what is related. Accordingly, it must be owned, the pursuers make a very diligent use of this favourable opportunity, and examine sir John Stewart and Mrs. Hewit on every trifling incident, which may possibly have happened, not only on such as it was morally certain these witnesses must have forgotten, in the circumstances they were then in, but on such as almost any witness in any circumstances would have found it impossible to recollect. Before therefore we proceed in our narrative, let us see what sort of facts they are, which they remember, and what they either mistake, or forget.

1st. They uniformly and solemnly declare, that Archibald and Sholto were born on the 10th of July 1748 at Paris; and that an accoucheur of the name of La Marre was the person, who brought lady Jane to bed. This appears in all the notes, which were taken of the birth, and in all the depositions; and notwithstanding the pursuers have been at much pains to make it believed, that sir John and lady Jane wished it to be thought, that the children were born at Rheims, they have inadvertently proved by their own second-hand reporters of conversation, the honourable Mrs. Primrose and lady Chesterhall, and by many other persons, that it was from the first universally known in Scotland, that the children were born at Paris. P. P. 69. A.  
— 71. E.

2dly. They all uniformly and distinctly concur in the description of the children's persons, and the state and condition of their health. The pursuers memorialist is so sensible of this, that by the happy flexibility of his logic, he turns his shaft, and attacks them on account of this very uniformity. He says, "Another thing extremely remarkable in these letters (the letters of sir John and lady Jane) is, the constant repetition of the same or similar expressions concerning the strength of the one, and weakness of the other twin." And for the proof of this he refers to five letters written by sir John Stewart, and eight by lady Jane. That persons in their familiar letters, written nearly at the same time on the same subject, should accidentally fall into the same or similar expressions, is no very remarkable case. Yet in fact these letters prove the very reverse of what they are brought to prove, and shew that the writers have put their own real feelings into their own natural and proper language. Sir John, who did not know the best use of his pen, does, as every ordinary man would do, stick pretty close to the same formulary. But lady Jane, who was a mistress of language, varies her phrase through almost every P. P. \*64. \*c.  
— 66. B.  
D. P. 985. E.

D. P. 983. D. mode of expression, which the subject would admit. The eldest  
 Serv. p. 32. D. child is said to be “promising,” “strong,” and “likely to do  
 ——— 37. D. “well,” “sturdy and well.” Of the youngest it is reported,  
 D. P. 985. C. that “he is weak, and little to be reckoned on,” “does not pro-  
 “mise a great deal,” “very low,” “weak and tender,” “came  
 “into the world in a feeble condition,” “delicate and puny;”  
 and besides these short expressions, which are supposed to be those  
 to which the memorialist alludes, there is commonly in every let-  
 ter a pretty turn of piety or affection, too long to be here  
 transcribed, which plainly shews, that lady Jane thought and  
 wrote like a woman of sense, and like a mother.

P. P. 386. K. It would be injustice not to mention on this occasion an in-  
 ——— 388. I. stance of honest and spirited behaviour in Mrs. Hewit. On the  
 ——— G. 12th of March 1765 there was an attempt to bring her to a third  
 examination, when she was sick in bed, and had not strength to  
 sign her name. She is teized with many trifling enquiries, to  
 which she modestly answers, “That it was hard, these questions  
 “were not asked, while her memory served her:” but to the  
 question, whether lady Jane knew, when she went to Rheims,  
 that Sholto was weak and tender, she deposes and said these words,  
 “Yes to be sure, we all kend he was weak.”

It is clear therefore, that sir John, lady Jane, and Mrs. Hewit,  
 did always uniformly describe these children in the same manner;  
 and that the circumstances and wants of the children had made  
 great impression on their minds, and enabled them to be very  
 exact on this point, when the memory of less interesting objects  
 was past and gone: and when we consider that these children did  
 appear to the whole world, at Rheims, at Dunkirk, and in  
 Britain, entirely the same as they had been previously described,  
 we have so strong an assurance, that they were both under the eyes  
 of the persons who gave these accounts, as the most artful logic  
 ought never to overcome.

3dly. Sir John and lady Jane were strangers at Paris, and did  
 not intend to stay any long time there; in Mrs. Hewit’s stile  
 Serv. 34. C. “they were in great confusion, haven no thoght of more than  
 “wan nurfes to seek.” Yet, notwithstanding all this confusion,  
 they perfectly remember the numbers, characters, and conduct  
 of all those various persons, to whose care the children were com-  
 mitted. These are points in dispute, which cannot be investigated  
 without recurring to facts, which have not yet been mentioned.  
 The writer of these papers begs, that credit may be given him at  
 present, and he will soon satisfy any candid enquirer, that this is  
 the



the case. In the mean time he would observe, that sir John and Mrs. Hewit appear to remember all that sort of facts, which must have engaged their more particular attention at the time they are said to have happened; all those facts which would naturally make the greatest impression on their memories, and which we are led by every possible reason to expect should be related with the greatest precision. If this is the case, it should seem to be no great objection to the testimony of sir John and Mrs. Hewit, that they have forgotten or mistaken a number of little incidents, which passed in hurry and confusion, made little impression at the time they passed, and would have been told with considerable variation, though these witnesses had been blest with better memories, and had been examined much earlier.

For what, after all, is the sort of facts, which they mistake, and in which they contradict each other? They mistake the trade of the nurses husbands; they mistake the day, or time of the day, when Archibald and Sholto were transferred from the care of one woman to another; they cannot agree, whether the nurse came to fetch the child, or the child was carried to the nurse; or whether Mr. La Marre, sir John, Mrs. Hewit, or Mad. Le Brun carried him. These are incidents, which passed so quickly, and are of so little consequence, that the writer of these papers freely owns, he should have had a very bad opinion of this transaction, if they had been related with consistency and exactness: in these points such a consistency is unnatural.

One might add to this, that Mrs. Hewit appears by her letters to have been much affected with fears and frights; and as she could have no information from any body but sir John, for want of language, it is not to be doubted, but she was very inquisitive and troublesome. Sir John was hasty, and would very probably give her many a short and inconsiderate answer, which Mrs. Hewit treasured up as a matter of truth and consequence: it became current in the family for want of contradiction, and by that means may with ill luck, but without any bad intention, have slipped into her deposition; or even into sir John Stewart's.

For these reasons the writer of these papers begs leave to be excused from engaging in an enquiry, which he esteems as unnecessary, as it is fruitless. He is willing however to resume the subject, as soon as the pursuers shall have declared, at what time of day Sanry's child was taken away; or engaged their own three witnesses to tell us, how many persons can travel in the stage-coach which brought lady Jane to Paris.

What sir John Stewart and Mrs. Hewit forgets, is soon mentioned: they forgot the names of hotels, of streets, and of persons. They did not intend to stay long in Paris, and they never meant to return to the same quarters, or to connect themselves again with the same persons, with whom they were now concerned. At one enquiry sir John recollected the name of one nurse; at another, the name of a second. These are two women who remained longest with the child. This is what the pursuers call contradiction. They should rather thank him for what he remembers, than blame him for what he does not; for without his help they had never found one of the books they secreted. The learned memorialist talks often of the facility of making discoveries at Paris; and yet, though the existence of one nurse is ascertained by unquestionable evidence, the pursuers have been just as unsuccessful in finding that woman, as the defender has been in discovering the other two.

Indeed it can never be matter of surprize, that these names should soon escape the memories of sir John and Mrs. Hewit. Mrs. Hewit knew them very imperfectly at the first; sir John was inattentive and inconsiderate. The great neglect, which has occasioned Mr. Douglas so much disquiet, was in omitting to take written evidence of the place, and circumstances of the birth, at the time it happened, and from the persons who were present. If that had been done, we had never heard of this process.

There is some odd reasoning about sir John Stewart's memory for names and dates, in the publications of Mess. Almon and Anderson. Mr. Almon is of opinion \* at page 305, "that sir John had a very good memory for names and dates." Mr. Anderson in the parallel passage, page 401, grants, "that sir John has mistaken some dates," for which he insinuates there may be a cause; but as to names, he is quite clear, that sir John had a very good memory, and was not defective when he chose to remember.

This charge scarce deserves a serious answer, unless it is for the sake of the person, whose name is used. However it may not be amiss, just to try sir John's memory by the test which Mr. Anderson has published.

1st. It appears, that sir John remembered the names of all the people with whom he lodged at Paris.

He remembered the names of the persons, to whom his letters were addressed, and the streets in which they lived.

(a) Lord Hailes.

He



He mentioned half a dozen gentlemen of his acquaintance at Rheims and on the road; he could probably have recollected twenty more of equal importance, had the pursuers found their interest in questioning him.

He remembered the names of all the towns, where he had lodged.

He remembered the names of two nurses, Favre and Mangin, who were longest in his service.

2dly. It appears that sir John Stewart forgot the names of three other streets, which were demanded of him; the street in which Mr. La Marre lived, where he probably was but once; the name of the street where Michel lived; and the name of the street where Le Brun lived; though he has described the last street pretty nearly as well as any other person could have done at the same distance of time.

He forgot the names of the bankers, with whom he had some transient business: but he has described them so, that they might easily be found.

He forgot the names of the milk-women and earlier nurses.

Mr. Anderson observes, "that he should not remember the names of servants and fellow-lodgers, is not extraordinary." Very true; but then it cannot be so strange as Mr. Anderson would make it, that he should forget all those names, because the milk-women and nurses are servants.—In short, every one of us may appeal to our own conduct, and to all the world, whether sir John's memory is not like the memory of most other people, only somewhat weak. We commonly remember the names of acquaintances, whom we have occasion often to name. We forget the names of servants, whom we scarce ever call by their own names: and we trouble ourselves less about the names of public streets, when we know the way to the house we want, unless it be for the sake of our correspondence.

## S E C T II.

### *Of the residence at Godefroi's.*

ON the evening of the 4th of July lady Jane, sir John Stewart, P.P.\*420.\*A. and Mrs. Hewit, arrived at the hotel de Chalons, rue St. Martin. So much has been said already of Mr. and Mad. Godefroi, that it is needless to say any thing more, than that neither P.P. 95. F. the

P.P. 98. c.  
 —98. B. the man nor his wife pretend to remember any one circumstance relative to the person of lady Jane or Mrs. Hewit; Mr. Godefroi even supposes Mrs. Hewit to have been but a femme de chambre.

Decl. 2. E.  
 P.P. 252. F.  
 —252. K. Sir John Stewart says, that lady Jane and he lodged the first night or two in Mr. Godefroi's, and then on account of its inconvenience left it, and went to Le Brun's. Mrs. Hewit says, that to the best of her remembrance sir John and lady Jane continued three days and three nights at Godefroi's; and thinks, that lady Jane was four days at Le Brun's before the delivery, which she is positive happened on the 10th of July 1748. As it is certain that they came to Godefroi's on the 4th, and that the birth is uniformly dated the 10th, here is a day too much in Mrs. Hewit's account. Sir John Stewart says, they staid only two nights in Godefroi's. It is probable upon the whole, that they took lodgings at Le Brun's on the 6th of July, and left Godefroi's on the 7th.

Decl. 5. D.  
 —6. E. Before we take leave of Mr. Godefroi, we should observe, that the man-midwife was engaged during the residence of the family at the hotel de Chalons. Sir John says, he was in call some days before the 10th, and that he met him accidentally, and engaged him at once.

This sudden engagement with the man-midwife furnishes us with the reason, why Mrs. Hewit knows so little of him. People usually converse on subjects, which are under deliberation; not on actions, which are compleated. The hire of a man-midwife was sir John Stewart's province; and he hired one without the knowledge of the family. He returned home, and related what he had done. Lady Jane and Mrs. Hewit were content, and nothing more passed on this subject, till the day of the delivery.

—5. D.  
 —6. E. We may be sure therefore, that when lady Jane removed from Godefroi's to Mad. Le Brun's on the 7th of July, Mr. La Marre, the man-midwife, was bespoke; that he knew of an excellent nurse; and that there was a provision of childbed-linen sufficient for one child.



S E C T. III.

*Of Mr. Andrieux's loan on July 10th.*

**I**T is time now to resume our history. The first thing, which Sir John did on his arrival in Paris, was to take up money of Messrs. Taffin. He expected to have obtained a farther credit, but was refused. In consequence of this refusal he applied to the friendship of Mr. Andrieux, who very kindly assisted him: and on the very day this assistance, be it credit, or be it money (for the witnesses vary the word) arrived, lady Jane was brought to-bed.

The money was not paid till July the 26th; as appears by the banker's books. There is here then a difficulty, which has greatly embarrassed the serious enquirers. We must begin this morning of the birth-day of Mr. Douglas, with an attempt to solve it.

Sir John says, “ that he remembers, that having applied to Decl. 2. K.  
 “ a banker, whose name he cannot remember, to advance part  
 “ of the money, which would be due a short time after; which  
 “ being refused, the declarant wrote to Mr. Andrieux his land-  
 “ lord at Rheims, to send him credit for thirty louis d'ors or  
 “ thereby, which he accordingly did, and lady Jane was brought  
 “ to-bed on the very day the credit arrived.”

Mrs. Hewit has deposed, “ that on their coming to Paris lady Serv. 12. A.  
 “ Jane endeavoured to persuade her banker to advance her thirty  
 “ louis d'ors, which were to fall due at Lammas following; and  
 “ that, as he refused to do so, Sir John wrote to Rheims to one  
 “ Mr. Andrews, to whom they had been recommended, who  
 “ ordered his banker to advance the money; and that very day  
 “ it was paid, lady Jane was brought to-bed, which made it un-  
 “ necessary to send for the servant-maids.”

Isabel Walker says, “ that by a letter, which the deponent re- — 20. A.  
 “ ceived from Mrs. Hewit from Paris, she was informed, that  
 “ my lady had been disappointed of the money expected there,  
 “ and was obliged to write to Mr. Andrews at Rheims for a sup-  
 “ ply of money; which Mrs. Hewit, by a second letter, ac-  
 “ quainted the deponent, was got upon the day, that lady Jane  
 “ was delivered at Paris: that she received the letter of July 22d,  
 “ previous to the one acquainting her with Mr. Andrews' supply  
 “ of money.”

In

P. P. 518. F.  
— 519. E.

In opposition to these three witnesses, letters and extracts from Mr. Andrieux's books have been produced; by which it appears, that Mr. Andrieux lent sir John Stewart only twenty-five louis d'ors, and that credit for this sum was sent by Mr. Havart of Rheims to Mess. Panniers at Paris by the post of July the 24th, and consequently, that the money was not received by sir John Stewart till above a fortnight after the 10th of July.

There would be a very great mistake here in the declaration of sir John Stewart, and deposition of Mrs. Hewit, if they were bound to the strict language of the exchange; but if we allow sir John to use his own words in the same sense, in which he used them to his wife and to Mrs. Hewit, perhaps it may appear, that there is no mistake at all: but first we should obviate a consequence or two, which has been drawn from this circumstance.

1st. The account of the receipt of this money was by no means introduced as a reason, why the witnesses recollected the day of the birth. The day of the birth was never in dispute, never out of mind. Mrs. Hewit expressly mentions, that the money was received only on the day of lady Jane's delivery, as a reason why the maids did not attend. Sir John is asked, how long after coming to Le Brun's lady Jane was brought to-bed? He says, he cannot profitively recollect the number of days; but it was very soon after his coming to that house, and then speaks of this credit. So that it should seem, that sir John either brought this circumstance in ex abundante, or it had in his mind some connection with his coming to Le Brun's.

Decl. 2. K.

2dly. Nothing ought to be inferred from the concurrence of these three persons in the same testimony to this fact, though it should prove false. Isabel Walker quotes her author, and Mrs. Hewit justifies her. Mrs. Hewit speaks with more importance; and yet it is clear, this is one of those facts, which she could only know by report from sir John; so that be this circumstance right or wrong, the whole exactness or irregularity (or willful falsehood, if the pursuers could prove it) must be placed to the sole account of sir John Stewart.

The writer of these papers humbly offers his opinion, that sir John did tell Mrs. Hewit on the 10th of July 1748 what he has since told the court of session; and that Mrs. Hewit did write to Isabel Walker between the 22d and 26th July 1748 what she has since deposed before the jury.

In order to satisfy ourselves on this point, we must look a little into the state of lady Jane's finances at this time.

The



The banker, of whom sir John speaks, was doubtless the widow Tassin and sons; upon whom sir John had brought a letter of credit from Mess. Paul Khar et Fils of Aix-la-Chapelle for 1679 livres 5 sols. This money, with one louis d'or which remained in cash when they arrived at Paris, was all that the family had hitherto provided for their subsistence till their return to Rheims.

There was no immediate want of money; but sir John had long foreseen, that he should want it, before he had any probable chance of leaving Paris. It was not believed, that lady Jane was quite so near her time. The ordinary expence of these three persons could scarce be less than a guinea per day, and the extraordinary of a lying-in to be provided, a midwife and nurse to be paid; and besides this, it is extremely probable from the circumstance of their receiving 1650 livres of this money on the 5th of July, and the remainder on the 6th, that they owed money to some person which they were obliged to pay out of this sum. It cannot be doubted therefore, that sir John Stewart acted prudently in endeavouring to provide farther credit. P.P.\*420.\*

The plan he had often used, and in this case had long designed to use, was to take up money in advance from the banker, allowing him the usual discount. Sir John says, he did apply to this banker, the widow Tassin, who refused to advance him any money. The negotiation with the banker began on the 5th of July, when he received 1650 livres in part of the money, as appears by lady Jane's pocket-book. Sir John goes on, and says, that on his refusal he wrote to Mr. Andrieux. That sir John wrote to Mr. Andrieux to borrow money is certain: that he wrote at this time is highly credible; because though he did not actually want money at that moment, he wished to procure a resource against his approaching wants, without which he could not send for the maid-servants. He says, he wrote at this time, and there is nothing in proof to contradict him, nor do the pursuers dispute this point; so that by all the rules of common sense we ought to date Sir John Stewart's request to Mr. Andrieux July 6th, on the morning after he had been first with the Tassins. P.P.\*420.\*B.

Though Mr. Andrieux was in pretty constant correspondence with sir John Stewart at this time, there appears only one letter from him in process, dated the 18th of July: we are sure however of two more, one dated the 24th of July, which inclosed the letter of credit from Mr. Havart of Rheims upon Mess. Panniers, and one received by sir John Stewart the 10th of July, which is probably the same with that referred to in the letter of the 18th. — 92. K. — 518. A. — 93. A.



P. P. 61. D.

The letter of the 18th does not mention sir John Stewart's request, and is no answer in any shape to his letter of the 6th. It is plain therefore, that the earlier letter to which reference is made, was the answer, and that this answer was written before the 18th; and of consequence, that there was a letter from Mr. Andrieux on the subject of this money, distinct from that of the 24th which inclosed Mr. Havart's; and that this letter did with the utmost propriety correspond to the date assigned by sir John and Mrs. Hewit. That sir John really received a letter from Mr. Andrieux on July the 10th in the morning, is evident from this, that sir John in his letter to lord Crawford, dated the 10th of July, says, "Lady Jane had that day received letters from Scotland," which must have been sent inclosed in a letter from Mr. Andrieux in the manner mentioned in Mr. Andrieux's letter of the 18th of July, as all the letters for sir John and lady Jane were at this time addressed to Mr. Andrieux at Rheims, and by him transmitted to Paris.

We now see the reason, why sir John mentions this credit, when he is asked how long they had been at Le Brun's before the delivery? He wrote to Mr. Andrieux on the day he hired Le Brun's lodgings: he received Mr. Andrieux's compliance on the morning of the day lady Jane was brought to-bed; his answer therefore in his declaration implies thus much, That he cannot tell the exact number of days, but they were just as many as usually pass between the time of dispatching a letter from Paris to Rheims, and receiving the answer.

We may see too, that Mrs. Hewit is very accurate in pointing out the true reason, which kept the maids from Paris. Had she said, they were kept away till Mr. Andrieux's money was paid on the 26th of July, she would have given a false reason; for Mr. Andrieux's promise, which sir John received on July the 10th, had enabled him to send for them. To this she very properly refers; but unhappily misses the proper mercantile expression, and that is all the mistake. Had sir John and Mrs. Hewit foreseen the logic of sir Adam Ferguson, they would have used the same word; credit and money are words, which differ as much from each other, as promise does from both; and yet the learned speakers in the books of Mess. Almon and Anderson, are represented, as refusing Mrs. Hewit the indulgence they claim for themselves. They perpetually assure us, that sir John has said the money was received on the 10th of July: "*Idem cum duo faciunt non est idem.*" Nay, they push this matter a great deal farther. In the case of the bill upon Mess. Tassin there



there is a reason in proof, why that credit was not of the same use as money at Rheims ; yet these gentlemen are made to argue, that sir John had money at Rheims, because he had that credit ; and therefore conclude, that three witnesses are perjured. There is also full proof, that Mr. Andrieux's promise received on July the 10th answered all the wishes and designs of the family, as well as money would have done : yet this they say may not be called *credit*, and therefore the same three witnesses are perjured a second time.

The interpretation here given to what the witnesses have said, is believed to be agreeable to the common language of mankind in all similar cases. Another instance occurs in this process. Lady Jane borrowed money of Lord Morton in 1749. The bond and bill arrived at Rheims November the 1st, and she received the money on the 2d. Yet her ladyship returns her thanks to Lord Morton on October 29th, *for his kindness in sending her credit*. And all the witnesses now examined, do uniformly and sensibly date the receipt of lord Morton's favour in the month of October, when his promise was first received. D. P. 975: B

When the hurry and confusion, which arose from the unexpected birth of two children, was past, and the promise of Mr. Andrieux's money received, the design of sending for the maids revived, and was actually put off at last, not by any chicanery of lady Jane, but by the good humour of Isabel Walker. She says, that Mrs. Hewit wrote her word, that though my lady had a good deal to do with money, yet she believed she would send for the deponent and Effy Caw ; but the deponent in return wrote Mrs. Hewit, that as lady Jane was now safely delivered, and had a nurse attending her, it was needless to put my lady in her present circumstances to the expence of transporting the deponent and Effy Caw ; and thus the whole affair ended. Serv. 35. c.  
— 20. B

This whole business of the money is said to have received a very severe censure from a learned speaker in Almon's book, (a) p. 85 ; but surely such censures must come with a very ill grace from a gentleman who is said to have paid so very little attention to the proof he condemns, as to confound the credit given by Mess. Khar of Aix 1979 livres 5 sols, with the credit upon Mess. Panniers for 25 louis d'ors.

(a) Lord President.

## S E C T. IV.

*Of Sir John Stewart's letters on July the 10th.*

WE are only removed from one difficulty to another. Sir John, it seems, had scarce received his letters from Scotland, through the care of Mr. Andrieux, but he sat down to write to lord Crawford, as we have seen. This with some other letters in process has furnished the pursuers with a presumptive argument, which they call with authority, proof that lady Jane Douglas was not delivered on the 10th day of July 1748, by evidence arising from the contents of various letters written by sir John Stewart and Mrs. Hewit upon the 10th, 11th, and 22d of July 1748.

This is one of those extraordinary criticisms, with which the pursuers cover over a want of proof. Mrs. Hewit wrote no letter on the 11th of July. Her letter of the 22d expressly mentions the birth in the same manner as she has since deposed to it.

Mem. pt 3. The principal fact, on which the pursuers ground their argu-  
p. 6. ment, is an entry in lady Jane's pocket-book in these words :  
" Mr. Stewart on the 10th of July wrote to the earl of Craw-  
ford, to his son, and to Mr. Macewen, Mr. Florentin, Mrs. Hep-  
burn, and Mrs. Andrews." The four first of these letters ap-  
pear in process, and make no mention of the delivery ; therefore,  
say the pursuers, there was no delivery on the 10th of July. Sir  
John Stewart too has marked the three first of these letters in the  
pocket-book.

Mem. pt. 3. But when it is known, that the post from Paris to every one of  
p. 8. the places, to which these letters were addressed, sets out at eight  
P. P. 254. E. in the morning : and when it is attested, that lady Jane's pains  
did not begin till eleven, it is plain that these letters could make  
no mention of the delivery. Indeed had any notice been taken of  
it in a letter of this date, the pursuers would have had a very  
strong presumptive argument against the truth of the birth. But  
wit is a weapon, which will cut many ways.

In support of this reasoning it is observed, that eight in the morn-  
ing is an early hour, and it is not credible that sir John was so  
early a riser as to have written six letters by that time ; they were  
probably written later in the day, and then the question resolves  
into this, Whether the date, July the 10th, expresses the day the  
letters were written, or the day they went to the post.

The



The original use of the word *date*, from whence the practice of mankind has never varied, was to mark the time when the letter was given to the messenger who carried it. It never did or could signify the time when the ink and wax were put upon the paper, and is never used in this sense by any but ignorants and children; unless therefore there is positive proof to the contrary, the date of the 10th of July does mark, that the letters were sent off by the post in the morning of that day.

Mr. Anderson would do well to inform his readers, upon what principle of literary interpretation he was led to say at page 35, (a) "that the letters themselves appear to be wrote upon the 10th:" and upon what authority he has asserted at page 36, that "the defender maintains, that the letters dated the 10th ought to be dated the 9th." The defender is so far from maintaining this, that he believes the letters to lord Crawford and Mr. Andrieux were actually written early on the 10th, after sir John Stewart had received Mr. Andrieux's packet from Godefroi's: and for the rest, he only asserts, that they were written some time before the departure of the post on the 10th of July.

The general rule of dating letters, which is observed by all men of business throughout the world, was also the particular practice of sir John Stewart's family.

Mrs. Hewit's letter, dated July the 22d, was sent to the post on that day; and it is marked in the pocket-book on July the 21st; nay several instances are cited by the pursuers from the pocket-book, which shew, that when a letter was detained by accident after the day on which it bore date, both the date and the time it was sent are marked by lady Jane. The pursuers observe, that had these letters been written on the 9th, they would according to the rule of the family have been marked in lady Jane's pocket-book of that date. To which it may be replied, that had the letters been sent away on the 11th, they would according to the rule of the family have been marked, as sent on that day. All this serves only to shew, that the entry in the pocket-book is not always made by one rule. In this instance we have little reason to expect exactness. Sir John Stewart has marked only three letters of this date in the book, and we are sure he wrote four; for the letter to Mr. Florentin is in process. Lady Jane has marked six letters; but then this article appears to be of the less authority, as it was made with several others *ex post facto*, and Mrs. Hewit's letter to the maids is omitted. Indeed the appearance of this pocket-book makes strongly in favour of the defender.



It was never meant for public inspection. It contains the private accounts of the family, and there is a total blank for the whole time lady Jane is supposed to lie-in.

P. P. 61. D. To return to the letters. The pursuers ground themselves upon a circumstance in the letter to lord Crawford. Sir John says, "that lady Jane has this day received letters from Scotland;" and as letters are not delivered from the post-office at Paris till the afternoon, they argue that this letter was written in the afternoon of the 10th of July.

— 93. C. This argument is nothing but a *petitio principii*; that sir John Stewart was in the house, to which his letters were addressed. Whether he was or was not in Godefroi's on July the 10th, is the point in dispute; and is here taken for granted, because it is in proof, that we see sir John Stewart's letters at this time came addressed to him at Godefroi's. How sir John got his letters from Godefroi's, Mr. Godefroi does not think proper to remember. Sir John, in his letter to lord Crawford, appears to be greatly alarmed with the contents of the letters from Scotland; and there is nothing improbable that he should walk out at seven in the morning in the month of July and enquire for his letters, and, in consequence of the bad news he had received, sit down in the bar to write to lord Crawford. In this letter he says, "The happy hour we look for daily."

Serv. 34. A. The next point to be considered is Mrs. Hewit's letter to the maids, dated July the 22d 1748; which contains what follows:  
 "The last day I writ to you Tibby, I told you your Mrs. was  
 "very well, as I thought; so far from that she had been ill the  
 "wholl night, and sad not a word till tuale a clock, which was  
 "4 ours after your leter wint af; then I think she was in soch  
 "a way as I could wisht not to a been witness to, tho I belive  
 "many is been worc with on, & she produced 2 lovely boys."  
 In a postscript she says, "The hurry I was in last writin I blive I  
 — 34. F. "dated my letter the 11th instead of the 10th which was the  
 "happy day."

The rest of this letter relates to the nurses, and other transactions which will be considered presently.

The pursuers call this correction of the date aukward and unnatural, and a pretended correction suggested by notions of expediency, &c. They infer from thence, that the former letter was really written on the 11th of July; that it made no mention of the delivery, and consequently that there was no delivery on the 10th.

Perhaps



Perhaps some people would choose to allow Mrs. Hewit a little more honesty, and, less artifice, learning and politeness, than these persons are wont to do. Several of her letters are in process, and shew a considerable deficiency on the side of politeness and accuracy. The letter before us is in many places scarce intelligible; we may however, with a little attention, make out, that it is very honest and inartificial. In this correction of the date, it should seem, Mrs. Hewit meant no more than to speak first of her own inaccuracy, before she was reproached with it. Had she spoke of the time she actually wrote the letter, and pretended it had been kept a day in the house before it had been sent to the post; then she might probably have imposed upon the maids, and upon Mr. Andrieux, through whose hands the letter passed; but she speaks of four hours before noon, of eight in the morning, the hour at which the post sets out. The post goes in one day from Paris to Rheims, and is subject to no uncertainty. If this letter had been sent away on the 11th, it would have been received at Rheims on the 12th; and if the date of the letter corresponded with this time of conveyance, no after-correction could have ever set it right; and this attempt of Mrs. Hewit would have effectually suggested the notion of a fraud, had the people of Rheims suspected nothing before. If on the other hand the letter was really received on the 11th at Rheims, Mrs. Hewit's observation on the 22d would serve to direct their attention to that circumstance, and it probably did so. This letter of Mrs. Hewit's, and Godefroi's answer to Mr. Maillefer's letter on the 12th, would have proclaimed the fraud to all the people of Rheims, had there been any fraud in this transaction. But the whole conduct of the two families of Mr. Andrieux and Mr. Maillefer, as well as the positive testimony of the persons of these families still alive, shew, that they never suspected any, and afford a convincing proof that there was none.

Besides, as all the letters to the maids are directed to the care of Mr. Andrieux, and as it appears from lady Jane's pocket-book, that a letter was sent to him upon the 10th, it is pretty certain, the letter alluded to by Mrs. Hewit was sent with this letter to Mr. Andrieux of the 10th; for it is very unnatural to suppose, that sir John wrote to him on the 10th, and again sent a letter to his care to the maids on the 11th.

The pursuers desire to leave no stone unturned; they refer us in the last place to a letter of sir John Stewart's to lord Crawford, dated July 22d, in which he speaks of his last letter, and calls P. P. 62. c.  
it

it his letter of the 6th instant. This the pursuers call an artful method to persuade his lordship, that his former letter had been dated the 10th by mistake. Many reasons concur against this insinuation. It appears to have been wholly unnecessary to antedate that letter, which did not contradict the account of the birth. All the other dates of the letters to Mr. Stewart, Mr. Macewen, and Mrs. Hepburn, were left to speak for themselves; and as sir John Stewart expressly desires his lordship to interest himself with his friends in Scotland about the contents of those letters, which he had acknowledged to have received only on the day the first letter was sent, it would have been impracticable to have imposed on lord Crawford, or to have carried back that date to the 6th of July, when those letters from Scotland were hardly written.

A presumptive argument is also taken from the place, from which some of these letters bear date. But as this is an objection common to several other letters written at Dammartin, it will be better to reserve it to the next part.

Upon the whole, sir John Stewart's account of the receipt of Mr. Andrieux's loan, and the mention of letters received on July the 10th in his letter to lord Crawford, do reciprocally confirm and accredit each other; and leave us fully convinced, that Mr. Andrieux's promise was received and the letter to lord Crawford written in the order they have been considered, previous to the birth of Mr. Douglas, on the 10th of July 1748.

## S E C T. V.

### *Of the Delivery on July the 10th 1748.*

**O**N the morning of the 10th of July Mr. La Marre called at lady Jane's lodgings; he found her near the time of her delivery, and waited till it was over. She had indeed been out of order the whole preceding night; her pains came strongly upon her between eleven and twelve; and she was delivered of Archibald between three and four in the afternoon, and of Sholto about half an hour later, in the presence of Mr. La Marre, Mad. Le Brun, Mrs. Hewit, and Mad. Le Brun's daughter. Sir John had once mentioned a widow woman, who lodged in this house; he afterwards corrected himself in the same declaration, though perhaps his first account is as accurate as his second.

A slight objection to the birth is grounded on a seeming variation in the time of day, which appears in sir John Stewart's accounts.

Serv. p. 34. A.

P. P. 254. F.  
— 50. L.

Decl. 5. B.  
— 6. A.

Serv. 31. C.



counts. He has said in a letter to Mrs. Hepburn, that lady Jane was brought to-bed in the evening of the 10th of July. In his declaration he says, "It was in the forenoon, at least before the declarant had dined." The family dinner would surely be put off, till they had leisure to eat it; and it might probably be evening before they dined.

## S E C T. VI.

### *Of the Children's milk-women and Sholto's nurse.*

MRS. Hewit tells us, that lady Jane would have no nurse provided for her delivery, because she said she did not know if she should bear a living child. Such a notion as this might have crept into lady Jane's mind in a melancholy moment at Le Brun's; but the reason, why some women will not have a nurse bespoken, is for the reason of having a woman with fresh milk, which has never been drawn; in this case they bespeak only a woman to attend by the day, and give the child suck, till a proper nurse is procured. This occasional person is usually, it seems, called a milk-woman: sometimes, when better assistance fails, she remains with the child, and assumes the denomination of *nurse*. Sometimes the new milk comes late, a week or more after the birth, so that the office of the former woman becomes equivocal, and she may be indifferently called either a *milk-woman*, or a *first nurse*. This observation should be attended to, because this was precisely the case of the first woman, who attended Mr. Douglas after his birth. The want of reflecting, that the same person is designed by two different appellations, has occasioned much confusion in all the reasoning of the pursuers memorialist about the nurses of this child.

When the children were born, the landlady got milk-women in the neighbourhood; immediately after the birth, diligent search was made for proper nurses; by which Isabel Walker understood, as every candid person would understand, such as were willing to accompany the children to Rheims; but all enquiry was in vain. Lady Jane was obliged to leave Sholto behind her, and Archibald went through many hands.

The youngest child was born so weak, that it was thought he could not live. Mr. La Marre ondoyed him on the evening of his birth, and his parents gave him the name of Sholto. The next day it was thought necessary to remove him into the country for fresher air. After spending the day in a fruitless enquiry after

Serv. 34 D.  
Decl. 9. c.

such a nurse, as would go to Rheims, fir John and Mrs. Hewit were contented to leave him in the neighbourhood of Paris, under the care of the nurse whom Mr. La Marre had provided. This woman is always represented as an excellent nurse. The child grew much stronger under her care, and continued with her sixteen months, till November 1749.

Whether dame Garnier, who lives in the Haute-borne, was Sholto's nurse, is a point which has been already examined. The pursuers contend, that this child was not in the possession of fir John Stewart and lady Jane till November 1749. This is perhaps the boldest and most extravagant assertion, which was ever offered to the credulity of a court of justice. Something has been said already on this subject, and more will offer itself in the course of our enquiry into the family-concerns during the succeeding sixteen months.

P.P. 217. c.

— 479. A.

An objection is made to the ondoyment of Sholto, which is said to be incredible, because it is not found in the parish-register. But this point may be settled by the pursuers own witnesses to their practice. They depose, that the ondoyment is never certified, except when the child happens to die before baptism: and that though it is the duty of midwives to carry the child to the church to be baptized, in case it lives; yet this duty is often neglected in indulgence to protestant parents.

## S E C T. VII.

*Of Archibald's nurse, recommended by Mad. Le Brun.*

Decl. 9. E.

P.P. 253. B.

— 524. A.

THE eldest child was very strong. He remained longer than Sholto in the hands of the first milk-woman, in hopes that a nurse might be got, who was willing to leave Paris; till at last fir John, being tired with this fruitless search, put him under the care of a nurse recommended by Mad. Le Brun, who took him home to her house the day before the family left Le Brun's, and with whom he continued only two nights.

Serv. 34. D.

A speaker in Almon's book, page 193 \*, seems at a loss to know, why the child was sent away; but surely this respectable person might have found the precise motive for this conduct in Mrs. Hewit's first letter to the maids, July the 22d. She there gives the following account of both children: "They are two  
" lovely creters, but the yongst very small and weakly, so that the

(a) Lord Alemoor.

" doctor



“ doctor beght he might be sent to the country as soun as  
 “ possible. Your Mr. and I had to go not a litell way befor we  
 “ got a right nurse that we ould pert with him to ; at last we got  
 “ on of the clineft best women iver you fa, a farmers wife, so I  
 “ hop, he shall do very well ; he agreeing so well, we was find  
 “ to send the other, who is a very stordy peace.”

It is plain by this letter, that the success they had met with in finding a good nurse for Sholto, determined them to send the eldest out to nurse too. At this very moment they gave up their enquiry after a woman, who was willing to go with them to Rheims, and intended to submit to necessity, and leave both the children at nurse at Paris.

This appears farther from the warmth, which the family expressed, when they found themselves deceived in the character of this woman : “ Your Mr. and Mrs. (says Mrs. Hewit) is resolved Serv. 34. E.  
 “ he (the child) shall never go out of their sight.” A hasty resolution, which they were obliged to break in less than a week after it was made.

This letter serves also to determine the time, at which the eldest child was trusted to the care of this nurse ; it was not till Sholto had been sometime at nurse, and the family grew to have some confidence in French nurses by the behaviour of that woman. Sholto was sent out on the 11th of July, and if we allow five or six days for their observations on this nurse, we shall find, that Archibald’s nurse was hired about the 16th or 17th ; and that after staying two or three days at Le Brun’s, she had credit enough to be permitted to take the child to her own house ; he staid there only two days : and, as we shall see presently, that he was taken away on the 21st, it follows that he was sent out on the 19th of July.

Hence we can very easily explain that slight variation in the language of the family, which has occasioned so much embarrassment on the subject of these nurses, and so much unjustifiable abuse on Mrs. Hewit.

In the letters written to different people, the family frequently, and very naturally, are led to speak of the difficulties and distresses they encountered at this time : amongst these the difficulty of getting nurses for the child was none of the least. In speaking of this subject it was natural to mention the whole number of women, through whose hands the child had passed ; nor was there the least necessity of distinguishing the milk-women, with whom

he staid five or six days, from a nurse, with whom he staid a shorter time. From hence it happens, that the whole number of Archibald's nurses are usually reckoned five, as in Mrs. Hewit's letter of August the 7th 1749, to which we may add sir John Stewart's letter of August the 6th 1748, who counts three changes and four nurses on that day. Lady Jane in her letter of February 14th 1749 reckons only four. Whether this is to be called more accurate, or less accurate, is a mere trifle, with respect to Mrs. Hewit, when she had previously deposed, that the child was at the first put into the hands of a milk-woman. She must naturally call the woman recommended by Mad. Le Brun, who took the child home to her house at the time they left Le Brun's, Archibald's first nurse; and of consequence reckon only three more nurses, and five women in all, as she had done in her letter. This being premised, we shall find all the accounts given by sir John and Mrs. Hewit relative to the number, character, and conduct of these women perfectly agree, whether we fetch our information from the letters written in 1748, or from their depositions in 1763.

## S E C T. VIII.

*Of the motive for leaving Le Brun's.*

**L**EAVING the children to the care of their respective nurses, we must now return, and attend on the poor lady in bed. Mrs. Hewit deposes, that lady Jane could get no sleep for three nights on account of the bugs; so that they were obliged to think of removing her. Sir John says, that they left Mad. Le Brun's on account of its being pestered with bugs; and Isabel Walker remembers, that Mrs. Hewit, when she acquainted her with the change of lodgings, gave the same reason for it: the Michels remember, that when the gentleman came to hire their lodgings, he made particular enquiry about bugs; and Mr. Godefroi has a mind to remember these bugs too. What that gentleman says is of no very great consequence; and when he deposes, that this company, who were particularly recommended to him by Mr. Maillefer, staid five days and an half in his house while a lodging was cleared of bugs, and he never asked them where they were a-going, nor offered to assist them in procuring a more comfortable apartment, he is altogether incredible. However, as Isabel Walker says lady Jane was very much afraid of bugs, and miserably tormented by them, it is possible they may have staid a day longer at Godefroi's than they intended, while the rooms they



they had taken were washed and cleansed ; and this may be a reason, why their residence at Godefroi's was drawn on for three days without any account being opened for them.

The pursuers memorialist is disposed to consider the date at Michel's of the 8th of July as a mistake for the 18th : it may be so ; and the girl, who intended to have wrote 18th and made 8th, may have been guilty of another mistake in her intention, and designed to have wrote 18th, when she should have wrote 19th or 20th. Michel's book is absolutely of no authority. It is probable indeed, that the lodgings at Michel's were approved, if not taken, the day before they were occupied : because lady Jane was eager to get from Le Brun's ; and because the witnesses, when they mention that Archibald was sent to the nurse's house, seem to say they were then leaving Le Brun's. Mad. Blainville agrees in this instance with sir John and Mrs. Hewit, and says, the gentleman looked at the lodgings a day or two before the company came to them.

They left Le Brun's on the 20th of July, and went to Michel's. This appears from <sup>a</sup> letters written at the time ; from sir John's declaration <sup>b</sup> ; and from Mrs. Hewit's deposition <sup>c</sup> on the service, confirmed by Isabel Walker <sup>d</sup> ; and from the entry in lady <sup>e</sup> Jane's pocket-book by sir John, and the note <sup>f</sup> in sir John's writing produced by Mr. Charles Brown. The witnesses at Michel's are so embarrassed with the false entry in their book, that much information cannot be expected from them : yet the Michel family confirm the testimonies of sir John and Mrs. Hewit, that they did come to this house on the 20th too ; but more of this in its proper place.

Dec. 9. E.

P.P. 125. I. K.

<sup>a</sup> Serv. 34. E.

P.P. 62. F.

<sup>b</sup> Decl. 2. H.<sup>c</sup> Serv. 12. D.<sup>d</sup> D.P. 367. E.<sup>e</sup> P.P. 391. G.<sup>f</sup> — 17. E.

## S E C T. IX.

*Of Mrs. Hewit's letter to Mr. Harper.*

THIS fact being so well ascertained by all the evidence, which the case can possibly admit, it is a wonder there should remain any dispute about it ; yet one single circumstance in the conduct of Mrs. Hewit has served to kindle a fresh flame. It is her letter to Mr. Harper, dated January the 11th 1763, which the pursuers have thought proper to print, though it was delivered to Mr. Harper the defender's witness, and ought to remain annexed to his deposition. In this letter she writes as follows :

“ Sir as I find myself very weak and am told am letly to day  
 “ I was fond to see you to eas my minde, for I find in reeding  
 “ over

P.P. 183. F.

“ over Mr Douglaſes Serves that I was in a miſtake in declering  
 “ that it was the tenth day after lady Jane was delivered that we  
 “ left the houſe of Madem La broun for it was the 6th day after,  
 “ and this I declare to you fir was I to ſtep into eternity this  
 “ moment.”

This may be accounted for (as one learnedly ſays, of lady Jane's affection for her children) either naturally or artificially.

As an artificial way of accounting for it, we may refer to the purſuers memorial part 2d. page 200. We are there informed,  
 “ that Mr. Andrew Stuart had gone over to Paris in Auguſt 1762,  
 “ and after ſome ſtay there, had diſcovered the houſe of Michel,  
 “ which diſcovery had probably reached Mrs. Hewit's ears, be-  
 “ fore her letter to Mr. Harper. To obviate the danger of her  
 “ depoſition being contradicted by the evidence, which might be  
 “ diſcovered at Michel's, ſhe ſeems to have fallen upon this de-  
 “ vice of making a ſolemn declaration (as if ſtepping into eter-  
 “ nity) that ſhe had been under a miſtake.”

The learned memorialiſt has forgotten, that all the accounts ſent into Scotland in the year 1762 were falſe: and that if Mrs. Hewit ever heard of them at that time, ſhe would have known as much of them then, as all the world knows of them now; and ſhe muſt have been the ſtrangeſt woman in the world, if ſhe thought to get rid of the diſgrace of having depoſed one falſhood by wilfully accommodating her depoſition to another.

What the learned gentleman ſays, “ That in the ſubſequent  
 “ part of this memorial it will be ſhewn, that the real time of  
 “ lady Jane's coming to Michel's was earlier than the 20th,” is plainly calculated to make the reader believe, that the purſuers affirmed the ſame thing in 1767 which was written into Scotland in 1762.

The plain truth is, that the letters written into Scotland affirmed, that lady Jane came to Michel's on the 8th of July, without any proof. The purſuers now affirm, that ſhe came on the 18th. Mrs. Hewit's letter ſettled the entry on the 16th, which neither agrees with the firſt account, nor the ſecond; nor are any of theſe three reckonings ſupported by a ſingle witneſs in the whole proceſs.

The natural method of accounting for Mrs. Hewit's perplexity may be drawn from Mr. Harper's depoſition. No one, except the writer, is ſo good an interpreter of a private letter, as the per-  
 ſon



son to whom it is addressed, especially if that person is a man of sense and integrity, like Mr. Harper.

Mr. Harper, after taking notice of a conversation betwixt him and Mrs. Hewit in 1763, which will be mentioned in its place, D. P. 451. F. deposes, “ that afterwards the deponent received a letter from Mrs. Hewit upon the 15th March 1763, and it is now exhibited ; “ which letter Mrs. Hewit delivered to the deponent when he “ was visiting her, and told him that she had written it some “ days before, and kept it to deliver to him the first time he “ came to visit her ; and that she added, that Mr. Wood the “ surgeon, who attended her, had told her, that she was in a “ dangerous way at that time ; and that she had therefore wrote “ that letter with a design to give it the deponent : ” and adds, “ that he doth verily believe Mrs. Hewit to be a woman of trust “ and veracity, and a sincere conscientious woman, so far as he “ could observe.” If this be her character, or indeed if such be the circumstances of the case, let her character be what it will, what can we think of this conduct, but that it is the mere dotage of an honest heart and weak understanding, perplexed with uncertainty, and labouring to ascertain the truth with a precision beyond the power of human memory ? Had Mrs. Hewit been capable of reading her deposition on the service with proper attention, she might have found several inaccuracies in dates ; but this is not one of them. What she said at the service on this point is confirmed by her own letters written in 1748, and by every witness in the process. Her conduct in this instance, when she could have no temporal interest in view, does honour to her integrity, and serves at the same time as a just apology for any involuntary mistakes, which may have crept into her subsequent depositions ; though they are indeed much fewer and less considerable than might reasonably have been expected, and scarce stand in need of an excuse.

*Conclusion to the account of the delivery.*

It is time now to take leave of Mad. Le Brun with one or two general reflections.

1st. This positive account of the delivery is confirmed beyond a possibility of doubt by the positive evidence to the pregnancy in all its symptoms ; it is opposed by nothing but the perjuries of Duruisseau and Godefroi.

The grand objection against sir John, lady Jane, and Mrs. Hewit is, the not finding Mad. Le Brun's house ; and a learned speaker

speaker is represented in Almon's book, page 192 (a) as saying, " I observe that wherever there was a real place, thither they have been effectually traced ; but to Le Brun's house they have not been traced, because there is no such person." To this it is sufficient to alledge the authority of this learned person himself, who in page 196 expresses himself thus : " On the 18th of July they go to Michel's, (this he did not learn from the proof) but from the 14th to the 18th where were they ? they have not been traced, nor seen, nor heard of." The plain deduction from all this is, that the place where they were from the 14th to the 18th is no real place. In fact, the moment they went into private lodgings, which were not registered in the books of police, all means of discovery ceased at once ; and it was just as impossible for the defender to find one house, as for the pursuers to find the other.

2dly. If sir John had foreseen the storm that was to arise, no doubt he might have ascertained the evidence of the birth in the most undoubted manner. But he, like many another person in his situation, confined his whole attention to the means of the present subsistence of himself, and of lady Jane's recovery : and as far as parole evidence can reach, the proof is in all necessary points regular and consistent. It is not to be wondered, that a person of seventeen years of age can produce no more than one witness to his birth, independant of the declarations of the parents : and in the present case Mrs. Hewit is certainly as little connected by interest to the family of lady Jane, as almost any attendant on a lying-in woman can be supposed to be.

3dly. A little attention to the real characters of these three persons will sufficiently explain those difficulties, which the pursuers profess to find in their conduct.

Mrs. Hewit was the third person in the family, and neither by her place in the house, nor by education, could be expected to attend to the providing a legal proof of the delivery. Her place was about the person of lady Jane and the children, and in what relates to the care of their health, and other little concerns. She did her duty, and remembers what she did with extraordinary exactness and consistency. She had a will of her own ; and was never the confidant of sir John Stewart.

Sir John was a man thoughtless and inconsiderate, and probably as much surprised to find his wife with child, as any of these

(a) Lord Ale Moor.



wife persons who have since reasoned on the case. He was not without a great degree of respect for lady Jane; and he felt the tenderness of a father: but upon the whole he rather considered the children as a burden on his little income, than any advantage to it. He was as incapable of executing a fraud, as he could be of designing it.

Lady Jane's character is very easily traced. She was noble, generous, chaste, religious, and humane. She had high notions of her birth; and the narrowness of her fortune was a perpetual restraint upon her natural disposition. On every transient occasion, when her finances were low, she chose to disavow her rank, and sometimes to assume a feigned name, rather than to disgrace her birth by such an humble appearance as that, to which the emptiness of her purse had obliged her to submit. In these cases she supported herself with the spirit of her family, and underwent great hardships with intrepidity and cheerfulness. Happily for Mr. Douglas, she had in this instance no occasion to change her name. She could afford all necessary expences, as the wife of a reformed colonel, who travelled without a servant. Mr. Stewart every where passed by his own name; and all that the pursuers have industriously published to the contrary, is now known and admitted to be false. But in these circumstances, out of the sight of those persons who had known her, or might hereafter know her as lady Jane Douglas, she had full room to guard the incognito, and spare her fortune. Patient in adversity, she could submit to live with Mad. Le Brun or Mad. Michel, though she was ashamed to be seen at Mad. Gilleffen's: intrepid in danger, she was never afraid of an unlicensed accoucheur, though she did not like the people of Rheims should know it. In these little circumstances, there might be a wish to conceal; but this wish was founded on a principle very different from a design to impose children on the world, which were not hers; on a principle which was known to have influenced her conduct in other instances, and therefore ought in good logic to be applied to this; on a principle, which never carried her from the paths of honesty and virtue, and therefore could never seduce her to the commission of the crime, with which her memory is injuriously defamed.

## DEFENDER'S PROOF. PART IV.

### THE RECOVERY AT MICHEL'S AND DAMMARTIN.

#### S E C T. I.

*Of Lady Jane's arrival at Michel's July the 20th.*

THE pursuers have acknowledged an intermediate residence, between the time sir John went from Godefroi's, and the time he came to Michel's: and as they have set up a false evidence to prove his departure from the hotel de Chalons on the 14th, they are now pleased to assert, that he came to the hotel d'Anjou on the 18th of July, without any evidence at all. We have heard the testimony of the family, that they left Le Brun's on the 20th of July: we will now enquire of the Michels what day they came to their new lodgings.

This may perhaps pass for a fruitless enquiry. The Michels are doubtless much embarrassed with the false entry in their book; yet there is no point of time settled by the intervention of parole evidence in this process more certainly, than that lady Jane came to Michel's on the 20th of July, or later.

D. P. 304. c. When lady Jane came to Michel's, there lodged in the house a widow, to whom sir John owns himself obliged. Her name is Blainville. She quitted the house some days before sir John Stewart to enter into the service of Mad. Goury. This lady kept a household register, from whence she has certified, that Blainville came into her service on the 29th of July 1748. It is from hence, as from a written testimony admitted by both parties, that we must fix our computations.

Another unexceptionable evidence, by which we may regulate the dates, is Mrs. Hewit's letter of the 26th of July. The child Archibald was certainly under the direction of the family on that day; and no reason can be conceived, why Mrs. Hewit should say any thing about him, which was not true. It appears by that letter, that the child was still at Michel's. She says, "I have hopes the youngest will do well: but the stordy vilen with hos is ta'n all from him." We may therefore date the removal of the child to nurse Favre's, on the 26th of July at soonest, with tolerable certainty.

These



These two æras are of no farther use in this process, than to enable us to settle the dates of some disputed transactions. Let us begin by trying, how far they will ascertain the time of the entry at Michel's.

The child was brought on the day after the family arrived. He rested one night (as we shall see presently) with the bad nurse, and on the second day nurse Favre was summoned, who staid with him at the hotel d'Anjou, till she had leave to carry him home on the 26th of July.

The nurse says, she lay two or three nights at the hotel d'Anjou: P. P. 138. B. if this account were exact, the child was brought to Michel's only on the 22d, and the family came on the 21st. But this number we know is too short, as the child was certainly at Michel's, when Mrs. Hewit wrote her first letter to the maids on the 21st. Mr. Michel says, the nurse may have staid four, five, or six days. We have therefore five numbers, two, three, four, five, and six, in evidence; and if we admit the middle number four, we shall be led to the truth, and find that the child was brought on the 21st, and that the family came on the 20th. — 121. F.

If we count backward from the later period of July the 29th, when Mad. Blainville removed to Mad. Goury's, we shall find, that the witnesses have comprized all the incidents they mention within the interval of ten days. We are not bound to believe, that all these incidents are real, for the principal of them, the jaunt to Versailles, is liable to great suspicion: but we cannot but suppose, that the witnesses have severally adjusted what they relate, in such a manner as to make their story consistent.

Mad. Michel reckons, that the nurse was in the house five nights<sup>a</sup>; that immediately after the child was removed, perhaps<sup>2</sup> the second day, the strangers went to Versailles; and that Mad. Blainville went away the next day. If we count these numbers back from the 29th of July, we shall fix the bringing of the child and in consequence the arrival of the family to the days we have already mentioned. — 113. F. — 114. C.

Mad. Blainville supposes, that the child was carried home by nurse Favre on the very evening of his arrival at Michel's: that on the morrow or second day she went to visit him: that two or three days after that visit sir John Stewart invited her to be of a party to Versailles: that on the next or second day after this invitation, they went to Versailles; and that two days after that party she went to Mad. Goury's. Though most of the — 127. B. — 127. C. — 127. D. — 127. G.

circumstances in this account are false, and all of them suspected, we see, that the time this witness meant to embellish with her romance was a period of nine days at most; and that as the end of it is fixed to the 29th of July, the beginning could not be earlier than the 20th.

These computations, made at such a distance of time, can hardly be considered as sufficiently accurate to determine of themselves the precise day of the entry at Michel's; but they are surely sufficient to vindicate the family of lady Jane, who have all placed it on the 20th of July.

P. P. 391. G.

The article in lady Jane's pocket-book is conceived in these words: \* “Commencé avec le traiteur Samedi 20 Juillet,” from whence we may conclude, that sir John and Mrs. Hewit sat down to supper, a meal of which the pursuers have thought proper to deprive them for two successive evenings, in opposition to the evidence of Mr. and Mad. Michel, by their frivolous pretence of dating the entry at Michel's on the 18th of July.

## S E C T. II.

*Of the first notification of the Delivery in Scotland, &c.*

TO avoid interrupting the subsequent narrative of transactions at Michel's, it will be right previously to mention a circumstance, in which the future interest of the family was very nearly concerned. It is the manner of communicating the news of the delivery to the duke of Douglas. Sir John's letter to lord Crawford, and Mrs. Hewit's letter to the maids bear date on the 22d, and were written on the 21st; and it is probable those for Scotland were dispatched at the same time.

Lady Jane could not write—sir John dared not; for the duke had never returned any answer to the letter which acquainted him with the marriage, though it was sent under lord Crawford's cover; and we know by sir John's letter to lord Crawford of the 10th of July, that there was somebody, who impressed him with fears from that quarter, for which there were no grounds. Lady Jane had a mind, that no body should write, till she was able to do it herself. But it is well known by many witnesses, that she was not indulged in this sentiment. Either sir John or Mrs. Hewit thought more reasonably in this instance. Mrs. Hewit

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\* “Begun with the cook on Saturday the 20th July.



took up the pen, and wrote the first letter to a worthy man, the common friend of all the family, Mr. Walter Colvil.

Unfortunately for the defender Mrs. Hewit's letter has been destroyed. Mr Colvil deposes, " that he had a letter from Mrs. Hewit from Paris, wherein she wrote, that lady Jane was delivered of two sons upon the 10th of July 1748, so far as he can recollect, having destroyed the letter two or three years ago, thinking it of no import; that the deponent received the last-mentioned letter about a fortnight or thereby after the said 10th of July; that about that time Mr. Archibald Stuart, then doer for the duke of Douglas, sent for the deponent, and having inquired if he had any word from lady Jane, he shewed the said letter; and Mr. Stuart read it, and took a note of what was contained in the letter concerning the birth of the children; and said he would send it, or shew it to the duke of Douglas." Serv. 7. A.

Mr. Colvil was examined on this process September the 2d 1763, when no enquiry was made about this letter; but on the 25th of June 1765 he was desired to swear to the same facts, on which he had deposed at the service. He then confirms his former account, and says, " that the letter mentioned in his former deposition in the service, informing him of lady Jane's delivery of two sons, was dated from Paris; and adds, that he has shewn or read the said last-mentioned letter to several persons, who at that time inquired for lady Jane." P.P. 27. L.  
— 299. D.

Nothing can be fairer than Mr. Colvil's appeal to Mr. Archibald Stuart, and to the other gentlemen, to whom he shewed this letter; and yet the pursuers affect not to believe him, and reflect on sir John Stewart for neglecting to communicate the news of the delivery, so soon as might have been expected. Mr. Archibald Stuart has been examined; and he did not keep the excerpt, nor does he remember either the date or the place of Mrs. Hewit's letter: but there is a letter from him to sir John Stewart in process, dated April the 28th 1749, which fully justifies Mr. Colvil with respect to the time, at which he dates the receipt of this letter. After congratulating sir John on the increase of the family, Mr. Stuart says, " I very early heard of it, though not from yourself." Why should Mr. Andrew Stuart or any person think that notice very late, which Mr. Archibald Stuart once thought very early? — 335. D.  
D.P. 1008. A.

The personal character of sir John ought not to be overlooked. He was always in debt, and habitually disposed to speak little of his

P.P. 992. A.

his own affairs, even when we should expect he would be most communicative. He was eleven days, it seems, without telling his friends the news of lady Jane's delivery; and this is made a mark of suspicion. But such behaviour seems natural to him. The death of the duke of Douglas was an incident greatly interesting to him and his family; and yet he was six days silent before he informed his own son of it; and it does not appear that he would have written then, if the duchess of Douglas had not directed him to send for Mr. Stewart to the funeral; and the whole of that letter is as thoughtless and inconsiderate, as any that he wrote in the year 1748.

— 372. E.

Mr. Joseph Douglas of Edrington, a very antient friend of the family, deposes, “ that he had frequent letters from lady Jane “ when she was abroad, giving him an account of her motions; “ and that the first letter he had, giving him account of lady “ Jane's delivery, was dated at Paris, and wrote by Mrs. Hewit “ at the desire of lady Jane, because lady Jane was not able to “ write herself; which was the reason assigned in the letter.” It is probable, Mrs. Hewit made a little free with lady Jane's name in this letter. Lady Jane's command to keep the birth a secret till she could write to the duke herself, was capricious and unseasonable; and Mrs. Hewit shewed her sense of friendship for lady Jane in disobeying it; or perhaps the order was given too late, after this and the former letter were sent off.

— 62. D.

Sir John's letter to lord Crawford, which notifies the delivery, is also upon the old subject of borrowing money; but as this money is not connected with any other incidents in the proof, it is necessary only just to mention it.

Mrs. Hewit's letter to the maids was certainly written this same day, the 21st of July, but after Archibald was brought to the house. It will be mentioned again in its proper place.

## S E C T. III.

*Of Lady Jane's person on July the 20th.*

THE first thing we wish to learn, is the appearance of lady Jane on this 11th day after her delivery, or a little later.

Decl. 5. 1.

Sir John has said, “ that lady Jane after her delivery continued “ in bed all the time she was at Le Brun's, and should have con- “ tinued a great deal longer, had she not been obliged to leave “ the house.”

Mrs.



Mrs. Hewit has deposed, that by reason of the heat of the weather lady Jane was not much in bed at Michel's; which agrees with what she wrote to the maids. P. P. 253. 1.  
S. rv. 34. E.

Let us next see, what the people at Michel's say to this.—When enquiry was made about this affair in 1756, and a learned speaker in Anderson's book (a) is said to have told us page 23, “it was too early to mistake in 1756,” Mad. Michel told Mr. Tait, that Mad. Stewart kept her bed on account of her being lately brought to-bed, she believes somewhere nigh Versailles. P. P. 4. F.

There is a curious remark on this passage in the pursuers memorial, which deserves our notice. It is said, If the defender means to avail himself of the first part of the passage of principal Gordon's letter about lady Jane's keeping her bed, he cannot repudiate the last part of it about her delivery having happened near Versailles: as if a person, who is ready to give credit to this witness as far as she speaks from her own knowledge, must of necessity receive all she believes. It is to be hoped, this learned Protestant has not been converted to the belief of transubstantiation by this masterly deduction of profound logick. Mem. pt. 2.  
P. 212.

It appears further by Mr. Andrew Stuart's journal, that Mad. Michel told him in June 1763, “\*Il est bien sur, que cette dame, quand elle est entrée ici, avoit le visage tiré, et l'air d'une personne fraichement ou recemment accouchée.” P. P. 1111. B:

Mr. Stuart expresses his surprize to find her discourse a good deal altered, since the last time he had seen her, and says, “the other party had been tampering with the witnesses, and taken this unjust advantage of instilling prejudices into their minds.” It may not be improper to observe, how far this charge is just, taking the facts as they appear in this very passage of the journal.

Mad. Michel told Mr. Stuart, that one captain Levingston had told her certain facts with the air of a man impartial; that a femme de chambre, who accompanied lady Stewart, had interrogated her on the facts without saying any thing improper; and that she had told lady Stewart, that we (i. e. Mr. Andrew Stuart, &c.) had made our researches with the utmost equity and delicacy. So far both parties are acquitted in the judgment of Mad. Michel. — 1009. L:  
— 1010. E.

Let us now observe, what Mr. Levingston told her. He said, that lady Jane acknowledged the child upon her death-bed—that — 1009. C.

(a) Lord President.

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\* “It is very certain, that this lady when she came to this house had a very thin face, and the appearance of a person freshly or recently brought to bed.”

both father and mother owned him—that the lady her companion had been present at the delivery—and that he was in possession of his estate, and had got a sentence in his favour by the courts in Britain. She said, she had learned likewise, that there was some abbé who had been present at the delivery. This last fact, which is false, is carefully distinguished from the rest, as told her upon less authority.

In this account, exclusive of the last article, what do we read which deserves the name of common-place arguments, tampering with witnesses, or instilling prejudices? Every thing, which captain Levingston told Mad. Michel was true, has always been allowed to be true, even by the pursuers themselves; and was strictly compatible with what Mad. Michel had to depose on either side: and Mr. Levingston had the best authority for what he said, the depositions of the witnesses in the service, which were published.

P.P. 1010. H.

Can Mr. Andrew Stuart say, he had so good grounds, for what he himself told Mad. Michel in this conversation? He took occasion to acquaint Michel and his wife, that they must not trust the reports of the other party, nor indeed the reports of either side, until they see the facts well established, which they will have access to do in a little time, *by which the imposition will appear*.—Why did Mr. Andrew Stuart tell them this? Had captain Levingston imposed on them? Had he told them more than was already proved?—He goes on, “ We told them this circumstance too, that “ we have discovered the father and mother of one of the children.” Surely in this Mr. Andrew Stuart went many lengths beyond captain Levingston; he told the Michels a circumstance, which was not yet brought into proof; which, as soon as it came into proof, was known to be false: he told them a circumstance, which was not calculated to prejudice the witnesses, but to deter and frighten them from deposing as they seemed to intend, by asserting, that he had a *corps* of witnesses in reserve, who would prove, that what they intended to say, was false.

The writer of these papers does not wish to push this argument as far as it will go. It is certain Mad. Michel could not tell another the particulars of the service, till she had herself been informed of them. But further than this it does not appear, that she has ever wilfully changed her language upon any application of the friends of Mr. Douglas. For probable proof of this we need look back only on one fact; that the livre d'inspecteur was taken out of her hands, before the defender's agents arrived in



in France : for positive proof we refer to principal Gordon's letter, and to her subsequent deposition.

To proceed, Mad. Michel, when further called upon as a witness in this process, has deposed, that lady Jane \* “*étoit de belle figure, avoit l'air malade et triste, portoit un grand mouchoir qui lui couvroit les epaules ; qu'elle avoit l'air malade : et qu'avant son départ elle avoit l'air un peu plus gai ; mais ne sçait pas si elle étoit plus ou moins forte ; qu'elle étoit très mince, et avoit la poitrine fort plate ; que la dite dame témoigna beaucoup de sensibilité et de tendresse pour l'enfant, lors du renvoi de la première nourrice ; et que la déposante croyoit alors qu'elle en étoit la véritable mère, et le croit encore ; et qu'il auroit fallu qu'elle eut joué un furieux rôle, si elle ne l'étoit pas.*”

Mr. Michel was not much in the ladies apartment. He however deposes, “*† que la femme de monsieur étoit blanche et fort pale et l'air malade, lors qu'elle arriva à l'hôtel du déposant ; coiffée en negligé comme une personne malade, et ayant la poitrine très plate et couverte d'un grand mouchoir ; que sa femme lui dit dans le tems, que la dame avoit l'air d'une femme, et sortant d'une maladie, sans dire de quelle maladie.*” It must have been the very moment lady Jane came in, that Mad. Michel told this to her husband ; for after the child was brought, there was no doubt or suspicion of any other disorder than the real one.

Mad. Blainville, who lived in the room opposite, deposes, “*‡ que la dame avoit le teint blanc et fort pale, extrêmement mince, et qu'elle avoit l'air d'une femme nouvellement accouchée ou sortant de maladie ; qu'elle n'avoit ni gorge ni ventre ; qu'elle portoit un grand fichu, qui lui couvroit la poitrine, jusqu'au menton ;*”

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\* “*Was of a fine figure, had a sickly and melancholy air ; she wore a large handkerchief which covered her shoulders ; and appeared to be sickly ; and before her departure, she looked more chearful ; but she does not know whether she was more or less strong ; that she was very thin, and her breast was very flat ; that the lady shewed a great deal of sensibility and tenderness for the child, when the first nurse was sent away : and the deponent then believed, and still believes, that she was the real mother ; and that she must have acted a most extraordinary part if she was not.*”

† “*That the gentleman's wife was white, and had a sickly appearance, when she arrived at the deponent's hotel, and her head was dressed in negligee like a sick person ; that her breast was very flat, and covered with a large handkerchief ; that his wife told him at the time, that the lady had the appearance of a woman recovering from an illness, but she did not say what illness.*”

‡ “*That the lady was of a white complexion, and was pale and extremely thin, and had the appearance of a lady newly delivered, or recovering from an illness ; and she had neither breasts or belly ; that she wore a large handkerchief which covered her breast up to*”



P. P. 130. K. “ menton ; que les fenêtres de sa chambre furent toujours fermées,  
 “ jusqu'à sa premiere sortie pour aller voir son enfant ; et que  
 “ la deposante, Monf. & Mad. Bréval disoient entr'eux, qu'ils  
 “ n'étoient pas surpris que les fenêtres fussent toujours fermées,  
 “ parceque l'air ne valoit rien pour les femmes nouvellement ac-  
 “ couchées ; que quand la dame sortoit, elle portoit une pelisse  
 “ noir, et étoit enveloppée de sorte que l'on ne lui voyoit pas le  
 “ nez ; que quand elle la deposante fut entrée dans la chambre  
 “ chez Michel ou elle vit l'enfant pour la premiere fois, elle  
 “ croyoit, que l'enfant appartenoit à la dame ; mais qu'elle en fut  
 “ beaucoup plus convaincue, quand elle vit les mouvements de ten-  
 “ dresse de la dame vers l'enfant qu'elle a décrit ci-dessus, et qu'alors  
 “ elle auroit pu jurer, selon sa pensée, que la dame étoit la mere de  
 “ cet enfant ; que la dame a commencée de se retablir chez Mi-  
 “ chel, pendant que la dame y resta ; et qu'elle paroissoit avoir un  
 “ air plus gai, à cause que son enfant étoit bien nourri par la se-  
 “ conde nourrice, mais qu'il lui restoit toujours un air de tristesse.”

— 134. E. Mad. Bréval, Mr. Michel's daughter, died in 1759 ; but Mr.

— 135. G. Bréval has deposed, “ \* que la dame étoit mince et delicate, ayant  
 “ le visage pâle, comme une femme qui releveroit de couches,  
 “ ou d'une grosse maladie ; qu'il n'a point remarqué si elle avoit  
 “ de la gorge, parcequ'elle étoit toujours fort enveloppée dans un  
 “ mantelet ; croit se rappeler qu'il étoit blanc.”

— 140. G. Nurse Favre has not much to say about lady Jane. She deposes,  
 only, “ † que la dame étoit extrêmement mince et maigre, d'une  
 “ peau fine et très mince, et n'ayant pas l'air d'une bonne santé ;  
 — 141. I. “ que la dame buvoit toujours chaud dans un gobelet d'argent,  
 “ que

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“ the chin ; that the windows of her apartment were always shut, until she went first abroad  
 “ to see her child ; and that the deponent and Mr. and Mad. Breval observed to each other,  
 “ that they were not surprised, that the windows were always shut, because the air was not  
 “ good for a woman newly brought to bed ; that when the lady went abroad, she wore a  
 “ black cloak, and was so wrapped up, that one could not see her nose ; that when the  
 “ deponent went into her apartment the first time, she believed the child belonged to the  
 “ lady, but that she was much more convinced of it, when she saw the emotions of the lady's  
 “ tenderness for the child above described ; and that then she could have sworn according to  
 “ her opinion, that she was the real mother of the child ; that the lady began to recover in  
 “ Michel's while she staid there, and looked more chearful, because her child was well nurs-  
 “ ed by the second nurse ; but that she still had an air of melancholy.”

\* “ That the lady was thin and delicate, and was very pale, like a woman recovering  
 “ from childbirth or from a severe illness ; that he did not observe, if she had any breasts,  
 “ because she was always wrapped up in a cloak, which he thinks he recollects was white.”

† “ That the lady was extremely thin and pale, of a whitish complexion and very thin,  
 “ and had not the appearance of good health ; that she always had her drink warmed in a  
 “ silver



“ que le traiteur lui avoit prêté : mais que la deposante n'a point  
 “ entendu la dame se plaindre d'aucune maladie, ni ne l'a vue se P. P. 141. 1.  
 “ coucher plutôt que les autres, quoiqu'elle lui parut extrêmement  
 “ delicate ; que la dame se portoit mieux à Dammartin, et buvoit  
 “ et mangeoit comme les autres.”

Mr. Michel Favre, the nurse's husband, says, “ \* Qu'il a vu la D. P. 136. c.  
 “ dame, qu'il croit la mere de l'enfant, à l'hotel d'Anjou, et à  
 “ Dammartin ; qu'elle étoit fort mince ; qu'elle étoit fort pale ;  
 “ et qu'elle n'avoit pas l'air de se bien porter ; puisqu'elle étoit si  
 “ pâle.—Mr. John Favre saw lady Jane at her window, and says — 134 c.  
 “ she was pale, & coëffée en bonnet.”

These witnesses severally speak their own thoughts in their own way ; but they all agree, and some of them express very strongly, that they believed in 1748 that lady Jane had very lately lain-in ; that she recovered gradually when at that house ; and that she was the real mother of the child ; and this article of the evidence seems really to deserve the first degree of credit. The conviction, which these witnesses express, that lady Jane was the real mother of the child, was habitual and permanent through the whole space of seventeen years ; the same in 1765, as in 1756 or 1748 ; and every one knows, that a conviction once formed makes a lasting impression upon the mind ; and a man never doubts or mistrusts such conviction, even after the facts by which his judgment was first instructed are forgotten, and cannot be recovered. When these witnesses are asked, what they thought of lady Jane's person and condition, they are all uniform and consistent and firm in one common opinion ; when they are examined on the trifling incidents, which passed seventeen years ago, and on the manner in which these things were done, we shall see there are almost as many different accounts, as there are witnesses.

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“ silver goblet which the cook lent her ; that the deponent did not hear the lady complain  
 “ of any indisposition, or see her go to bed before the others, although she appeared ex-  
 “ tremely delicate ; that the lady appeared better at Dammartin, and eat and drank like  
 “ the rest.”

\* “ That he saw the lady, who he believes was the mother of the child, at the hotel d'An-  
 “ jou and at Dammartin ; that she was very thin and very pale, and she had not the ap-  
 “ pearance of being in good health, as she was so pale.”

## S E C T. IV.

*Of the bringing Archibald to Michel's.*

THE next point to be examined is the appearance of Archibald. But we must first bring him from his nurse. On this incident there are two points of dispute; first, on the time he was brought;—and secondly, on the persons who went to fetch him.

Decl. 9. E. Sir John's account is, "that the eldest boy was never sent into the country; but, when they were changing lodgings, he was sent to the house of a nurse in Paris, where he continued two nights or thereby, until the declarant got a nurse for him from St. Germain's, and then he was brought to Mad. Michel's."

P. P. 253. L. Mrs. Hewit says, "that upon lady Jane's leaving Le Brun's, Archibald the eldest was sent to the house of a woman living in Paris to be suckled, till a proper nurse was got; and that he staid only two days, till he was brought to Michel's."

On the article of the time of bringing the child Sir John and Mrs. Hewit agree. It could be no other than the day after the family had removed to Michel's, the 21st of July; and it is plain by Mrs. Hewit's letter to the maids, written on that day but dated July the 22d, that Archibald was then in the house with them; and both Mr. Michel and his wife are quite positive, that the child was fetched the day after the arrival of the strangers.

—254. B. Mrs. Hewit has unluckily carried the child to Michel's without a nurse; she says, that when they brought away the child to Michel's, Mad. Michel got a woman to suckle the child, till they got a proper nurse: that in a few days they hired a nurse; but she proving a bad one, Mad. Michel persuaded the woman whom she had first got to suckle him, to go along with them to a village near Paris.

—141. B. This woman, whom Mad. Michel procured, is no other than nurse Favre. Nurse Favre has deposed, \* "Que depuis le jour que l'enfant lui a été donné à Paris jusqu'à son départ pour Dammartin, elle l'a nourri sans interruption." The nurse is certainly in the right; but Mrs. Hewit's mistake is certainly of very little importance, and amounts to no more than this, that at the dis-

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\* "That from the day the child was given to her at Paris, until her departure for Dammartin, she nursed him without interruption."



tance of seventeen years she says Mad. Michel procured the nurse for Mr. Douglas after he was brought there, which in fact Sir John and Mad. Le Brun procured immediately before the child was carried to Michel's. This trifling error in the time of engaging the nurse, who went with the child to Michel's, is the only one into which Mrs. Hewit has fallen about the children or the nurses.

Secondly, with respect to the manner of fetching the child fir Decl. 9. K. John is a little obscure. He says, the nurse with whom Archibald lodged, was found out by Mad. Michel or Mad. Le Brun, he cannot tell which:—"That being satisfied the child was well, and only to be forty-eight hours or thereby out of his fight, does not remember that either the declarant or any other person from him went to visit the child at the nurse's house; and declares, that from the first time he was sent to this nurse's house, he was not brought to this declarant's lodging till the time, that he was brought there to continue." So far is true, or at least not contradicted. He then adds, that the landlady, who procured the first nurse, went and brought the child and the nurse [who came from St. Germain's] to Mad. Michel's. The obscurity of this passage arises from fir John's mentioning two different women under the same designation *the nurse*. He had in the beginning of this long answer distinguished them with exactness. He says, "He continued two days or thereby with the nurse provided by his landlady, until the declarant had got a nurse from St. Germain's, and then he was brought to Mad. Michel's." — 9. E.

It should be observed, that this account is the rather imperfect on the point now under enquiry, because it is not an answer to the question, How was the child brought to Michel's? but to a previous question, What stay did he make at the nurse's? — 9. D.

In a letter written this very day, July the 21<sup>st</sup> 1748, Mrs. Hewit tells the maids, "Some days after (the child was sent to nurse) your master went out to see him, and found the nurse drunk; upon which he sent the coach for me, and we brought him with us. We have got a fine milk-woman, till we get a right nurse, for your master and mistress is resolved he shall never go out of their fight." Serv. 34. E.

In her deposition she has said, that fir John and the deponent P. P. 254. A. went and brought the child to Michel's from that house, where he had only staid two days; and that fir John's reason for bringing away the child was, his finding the woman intoxicated with liquor;

liquor; upon which he immediately sent back the coach for the deponent, and then they brought away the child to Michel's.

Sir John says, the landlady, who had hired that nurse, brought away the child. Mrs. Hewit says, it was she herself who brought it. One ought not to impute this difference to mistake, though it may be one; because sir John finding the woman drunk, would naturally employ Mad. Le Brun, the person who had hired the nurse, to discharge her, and take away the child; and Mrs. Hewit, who was sent for by him in a hurry, would of course consider herself as the principal agent in this transaction.

Upon comparing these accounts together, it appears plainly, that sir John went out to see the child; but finding the nurse drunk and incapable of attending it, sent in haste for Mrs. Hewit, and probably for Mad. Le Brun; and at the same time took upon himself to hire a nurse, a country-woman who said she came from St. Germain's; and that he, Mrs. Hewit, and perhaps Mad. Le Brun too conducted the child, and his new nurse, to Mad. Michel's. A little circumstance in the stile of Mrs. Hewit's letter will serve as an instance of that artless simplicity, with which the whole story of this woman is told. It appears from the French witnesses, that the poor woman had entertained expectations of being continued in the service of the child, till he was weaned, and was willing to accompany the family to Rheims. In all the accounts therefore subsequent to the dismissal of this woman the family spoke very properly, when they said, they had lost a *nurse*: on the other hand, when we consider the hasty manner in which this woman was hired, it is impossible to conceive, that sir John Stewart engaged to take her any otherwise than on trial; and Mrs. Hewit expresses the idea which the family had of her on the 21st of July, when she calls her in the letter to Isabel Walker, a fine *milk-woman*. On the contrary, the next woman, who came well recommended by Mad. Michel, and whom they were willing to keep as long as she was willing to stay, is in Mrs. Hewit's letter of the 26th called, a fine nurse; though according to that woman's account, she had constantly refused to leave Paris. But this was more than Mrs. Hewit knew, till she quitted them at Dammartin.—At the end of seventeen years, or seventeen months, the family might indifferently call the same person either a milk-woman, or a nurse; but Mrs. Hewit, in her letters to the maids, would never have called that woman a nurse on the 26th of July, whom she had called a milk-woman on the 22d, because neither Isabel Walker nor Effy Caw (who by the pursuers courtesy has never yet been reputed an accomplice)

P. P. 126. H.

Serv. 34 D.

— 35. C.



complice) would have understood what she meant. This distinction, which Mrs. Hewit has made, shews without other proof, that she spoke of two different persons at these different dates.

S E C T. V.

*Of the pretended errand to St. Germans.*

WE must now consider a very great objection to this account. P.P. 112. H.  
Mad. Michel has deposed, \* “ Que le jour de leur entrée,  
“ après avoir soupé, ils firent monter la deposante dans leur  
“ chambre, et le monsieur, qui n’avoit point donné d’arres, lui  
“ dit, Ne soyez point inquiette, nous partons demain le matin  
“ pour aller chercher notre enfant, qui est en nourrice du coté de  
“ St. Germain ; à quoi le deposante répondit, qu’ils étoient les  
“ maîtres : qu’en effet ils partirent tous les trois, le monsieur  
“ & les deux dames le lendemain matin entre 6 et 7 heures dans  
“ un carosse de remise, et revinrent le même jour au soir, ou le  
“ lendemain au soir avec un enfant et une nourrice.”

Monf. Michel, and Monf. Breval his son-in-law, confirm the — 120. K.  
principal circumstances of this account. — 134. G.

The writer of these papers thinks the French witnesses are mistaken, for the following reasons :

1st, Mrs. Hewit’s letter, which relates these little incidents on the day they happened, is undoubtedly better authority, than any parole evidence at the distance of seventeen years, provided there is no reason to suspect her of wilful falsehood ; and whatever reasons the family might have to conceal lady Jane’s going out, they could have none to alter the situation of the place, where the child was at nurse.

2d, Mad. Michel’s story is contradictory to the account she — 4. F.  
gave in 1756, that *lady Jane kept her bed* ; and to Mad. Blainville’s deposition, who says, that she never knew lady Jane go out, till — 130. C.  
after nurse Favre had taken away the child ; but that she kept the windows constantly shut, as a person would do, who had occasion frequently to lie down on the bed.

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\* “ That the day of the entry after supper they called up the deponent into their apartment, and the gentleman, who had not given earnest, said to her, Do not be uneasy, we are going away tomorrow morning to bring our child, who is at nurse towards St. Germain’s ; to which the deponent answered, They might do as they pleased : that accordingly the gentleman and two ladies went away next morning, betwixt six and seven o’clock, in a hired coach, and returned the same day, or the next, at night with a child and a nurse.”

3d. It appears that the memories of these witnesses are aided, like those of many others, by sir John Stewart's declaration. Sir John has there said, that he got this nurse for the child from St. Germain's. Mrs. Hewit says, sir John told her at the time, that he found this woman in the suburbs. These accounts are both true and both consistent, and were probably well known and understood by the Michels in 1748; but in the beginning of December 1762, they remembered no more than Mrs. Hewit has remembered, "*\* que cet enfant étoit accompagné d'une nourrice, que le chevalier Stewart dit avoir été prise au hazard dans la rue.*" The remembrance of the place from whence the nurse came was wholly lost, and revived only by the minutes of the declaration which arrived in France about Christmas 1762: and the story that the child and nurse were fetched from St. Germain's seems to be grounded on a bad French translation of sir John's ungrammatical expression.

Decl. 9. E.

P. P. 254. E.

Ap. D. Mem.

pag. 40. VI.

D.P. 1022. E.

4. The memories of the Michels might be the more easily confused on this point, from their recollection of an incident which alarmed the family in the evening on which the child was brought.

## S E C T. VI.

*Of the bad nurse without milk.*

P. P. 121. A.

— 134. H.

THE Michels describe this nurse as "*† petite & mal propre, & ayant l'air d'une païfanne.*" Mrs. Hewit had scarce wrote her first letter to the maids, before this nurse was discovered to be a very improper one. The circumstances of this discovery are minutely related by Mad. Blainville.

— 126. C.

Mad. Blainville's account is too long to be transcribed; she says, that at half an hour past nine she was called into Mad. Stewart's chamber to look upon a child, who would not suck; that having stripped the child, and found nothing amiss about his body, though he was languishing for want, she examined the nurse, and found she had no milk; that the lady, whom she took to be the mother, fainted away; that the gentleman was in a violent passion; that the nurse kneeled down, and begged they would not ruin her; and that in the end, by her advice the nurse was dismissed with a small gratuity, and Mad. Michel found another in her place.

\* "That this child was accompanied by a nurse, who, sir John Stewart says, was taken by chance in the street."

† "Little, and ill dressed, and having the appearance of a country-woman."



Sir John Stewart says very shortly, that the nurse having proved Decl. 9. F. a very bad one, she continued only one night, as he thinks; and P.P. 254. c. Mrs. Hewit mentions the badness of this nurse.

Mr. and Mad. Michel agree with Mad. Blainville, that some- P.P. 113. G. thing was discovered on that evening. Mad. Blainville says, the — 121. C. new nurse Favre was called immediately, and carried home the child directly; but in this she is contradicted by all the witnesses. Mad. Michel agrees with sir John, that the nurse was not sent away till the morrow; that she lay one night in the house, and says that nurse Favre was not fetched, till the other was dis- — 139. G. missed. Nurse Favre never saw that woman, and says it was in — 142. H. the day-time, and not by night, that Mad. Michel sent for her; and Mr. Michelle Favre, her husband, says it was about noon. — 131. D.

If the condition of the nurse was so bad as Mad. Blainville represents it, one may reasonably ask, how the child subsisted from Sunday morning to Monday noon? It is probable, that the child cried and alarmed the family at night; but it is certain, the nurse was not found insufficient till the next day. There is an air of romance and self-importance in all Mad. Blainville is pleased to say, which takes much from the degree of credit, which would be otherwise due to her.

Mrs. Hewit has said, that they discovered this nurse to be a bad — 254. B. woman by having the king of France's mark upon her as a thief. One is sorry to find that a person (a) in Almon's book, who is said to have declared he would not rest much upon the parole evidence, has thought proper to rest on this. The French witnesses know nothing of this mark. The woman's back was never examined, nor would Mrs. Hewit have known the French king's mark, had she seen it. It is plain to any one, who will attend to the character of the witnesses, that this remark has arose from some very angry words of sir John Stewart, which Mrs. Hewit believed, and which she has repeated with the same simplicity and good faith, as she had used on the service, when she mentioned lady Jane's reveries about her not bearing a living child.

This bad nurse had the appearance of a country-woman. Sir John probably told the Michels, that he had her from St. Germain, as he has told the court. The woman herself might probably be asked, from what part of the country she came; and nurse Favre undertakes to remember, that Mrs. Hewit pronounced the — 139. H. word St. Germain, which Mr. Buhot thought sufficient authority D.P. 1032. E. for reporting, that this woman told him lady Jane was brought

(a) Lord President.

to-bed at St. Germain en Laye. She never told him any such thing. Yet upon the whole, the trouble occasioned by this country nurse, whom sir John had accidentally picked up at Paris, was sufficient to impress on the minds of all these French witnesses, that the child was brought from St. Germain; and as they never were told where lady Jane lay-in, it appeared no unreasonable conjecture to suppose, that she had been delivered in the place, from whence the nurse had come. This bad nurse has never been found; but the new nurse Favre, the fourth woman, through whose hands the defender passed, is a witness in process.

## S E C T. VII.

*Of Archibald's person on July the 22d.*

WE have now time to hear what the child's new acquaintance say of his person.

P. P. 121. G. Mr. and Mad. Michel know nothing about the child's appearance, except that he throve extravagantly under the care of nurse Favre.

— 125. E. Mr. Breval says, \* “Qu’ayant vu l’enfant chez Monf. Michel, et l’enfant lui a paru avoir un mois ou 5 semaines.”

— 129. H. Mad. Blainville says, “Que l’enfant lui a paru agé d’un mois, huit jours plus, ou huit jours moins, ne se rappelant point, quels étoient les traits de son visage, ni la couleur de ses yeux, mais qu’ils n’étoient pas noirs; ne sçait s’ils étoient gris, ou bleus; qu’il avoit la peau blanche comme les enfants l’ont à cet age; que la couleur rouge, que les enfants ont en naissant, et qui ne dure que quatre jours ou 8 jours tout au plus, étoit passée.”

D. P. 134. F. Mr. John Favre says, he saw the child several times, † “d’abord très pâle et très maigre, & paroissant bien jeune; ne sçait pas l’age, et que dans les quinze jours que sa belle soeur l’a eu nourrir, il s’est si bien rétabli, qu’il n’étoit pas reconnoissable.”

The principal evidence to the person of the child is certainly nurse Favre, and she has indeed no easy task to determine his age

\* “That having seen the child at Michel’s, he appeared to him to be about a month or five weeks old.”

† “That the child appeared to be about a month old, eight days more or less; she does not recollect the features of his face, nor the colour of his eyes; they were not black, but does not know whether they were grey or blue; that his skin was white like children of that age; and that the red colour, which new-born children have, and which only continues for four or eight days at most, was gone off.”

‡ “At first very pale and very lean, and appearing to be very young, but does not know how old; and that during the fifteen days that his sister-in-law nursed him, he recovered so much, that he would not have been known for the same child.”



from his appearance with that precision, which the present state of the dispute requires. According to the description, which the Mignons have given of their child, strong, large, and lusty, with eyes of a fixed blue colour and white hair, it is impossible that Archibald could be their child; and this is sufficiently clear from what the Rheims witnesses observed. But for further assurance one would wish (with leave of the Monitoire, and popular clamour, and Mr. Andrew Stuart's information *that he had found* the real parents of one of the children) to ascertain the same truth by the earlier witnesses at Paris.

But first we must look a little back on the conduct of the pursuers, and see what they intended to prove, before the purchase of Mignon's child was known.

On the 15th of October 1762 Monsr. Buhot reported from nurse D.P. 1032. B. Favre, that she told him, “\* *Qu'on lui a remis un enfant paroissant* “ *agé de près de trois mois.*”

In the premiere plainte 17th December 1762 it is said, “† *L'en- — 1022. E.* “ *fant paroît aux personnes du dit hotel agé de plusieurs se-* “ *maines, ou même quelques mois.*”

In the Monitoire we read, “‡ *Que l'enfant fut agé d'environ 6 — 1012. B.* “ *semaines ou deux mois.*”

In the Condescendance of Facts the court is told, that the child No. 18. appeared at that time to be at least six weeks old.

Such was the fluctuating state of the pursuers assertions before the story of Mignon's child came out: as soon as that was known, they depart at once from all they had before alledged, and desire us to believe, that the child was precisely twenty-one days old. For according to their reckoning the child was given to nurse Favre on the 19th of July, though according to the witnesses he was not given till the 22d, when Archibald was twelve days old. If these witnesses did really tell them in 1762, what the pursuers have published in their names, they deserve no manner of credit; if they did not, with what caution must we read the productions of these gentlemen, who take such unprecedented freedom with the truth in their prosecution of an orphan? The Michels, who are quoted in the plainte, have declared, they never remarked the child; and nurse Favre has denied, that she ever gave any ac- P. P. 121. G. — 113. L. — 142. G. count different from what she deposes in 1765.

\* “That a child was given her near three months old.”

† “That the child appeared to the people at the house to be several weeks, or even some months old.”

‡ “That the child was six weeks or two months old.”

P. P. 139. L.

To return, nurse Favre says, “† Que lorsque l'enfant lui a été donné, il pouvoit avoir trois semaines ou un mois ; qu'il étoit alors en si mauvais état, qu'on ne lui auroit pas donné huit jours ; mais qu'il n'avoit plus la couleur rouge, que les enfants nouveaux nés ont ordinairement 8 ou dix jours ; qu'il n'avoit plus le ventre entouré de bands, état dans lequel on les tient, jusqu' à ce que le cordon du nombril soit tombé ; et que l'enfant avoit passé ce tems.”

These words have been already explained. Literally taken they teach us three things.—1st. That in the bad state in which the child appeared, one would not have supposed him eight days old.—2dly. That the nurse discovered by *reasoning*, not by *observation*, that he must be older ; first, because the red colour was gone away ; secondly, because his roller was taken off.—And 3dly. That she conjectured he might be three weeks or a month old ; which is a pure matter of opinion.

There were several circumstances, which might honestly mislead nurse Favre in her opinion, and make her and other witnesses at Michel's think, that the child was a few days older than he really was.

1st. They do not seem to have known, that lady Jane was driven out of her lying-in apartment by necessity, and consequently would imagine, that she staid in bed the usual time, near a month ; which is the age the nurse gives the child by conjecture.

— 114. C.

2d. It appears from a little dispute with nurse Favre, that lady Jane desired to bring up the child in the English manner. The Mignons wanted a strong roller for their child when he was thirteen days old, or as the pursuers say twenty days, though this is without either proof or consistency. Lady Jane's child had quitted his roller on the 12th day ; this would certainly give him a greater appearance of strength, than an ordinary French child would have at the same age.

3d. The nurse and all the French witnesses are under a mistake about the child's case, when he was given to nurse Favre. They supposed, that he had been languishing in the hands of the bad nurse from the time of his birth ; and in stating his age make allowance for the little care, which had been taken of him, and

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† “ That when the child was given to her, he might have been three weeks or a month old ; that he was then in so bad a condition, that one would not have taken him for eight days old ; but that he had not the red colour, which new-born children ordinarily have eight or ten days ; that his belly was not tied about with bands, in which state children are kept until the navel-string is fallen ; and that the child had passed that time.”



express their astonishment at the quick re-establishment of his health. But in reality there was nothing the matter with the child, but that he had been without his usual food for that single day; and his re-establishment was no matter of astonishment: it was the ordinary effect of one hearty meal.

But this will not explain all that nurse Favre meant to say. The writer of these papers has already intimated his opinion, that this woman was influenced and intimidated by popular clamour, and by the weight of evidence, which she was made to believe would come from the family of Mignon. He is farther confirmed in that opinion by a subsequent passage in her deposition.

The defender's counsel had a mind to make her tell what she had sworn before the Tournelle; and she answers, “ \* Que P. P. 142. c.  
 “ quand elle fit sa deposition devant la Tournelle au sujet de  
 “ ce procès, elle deposa comme elle depose à présent, que l'en-  
 “ fant paroïssoit avoir trois semaines ou un mois, quand elle l'a  
 “ reçu; mais qu' à cause de son foible état on ne lui auroit pas  
 “ donné huit jours.” This *foible état*, or as she called it before, *mauvais état*, was nothing but imagination: whether the child was Mignon's or lady Jane's, it is plain by either account, that it wanted nothing more than a single meal, and all that she and the other French witnesses have deposed about his amazing recovery, is absolutely incredible, unless it be explained by the depositions of sir John and Mrs. Hewit. But though the *mauvais état* was not real, it was apparent. In that state the child appeared to be no more than eight days old, and she contradicts herself, when she says, “ qu'il paroïssoit avoir trois semaines ou un mois.” She had studied her answer to the first question, and answered discreetly and consistently, “ qu'il pouvoit avoir trois semaines ou un mois;” but upon the cross examination she is off her guard, falls into downright nonsense, and betrays the timid principle, with which she had been artfully inspired.

What this nurse says about the eyes and hair of the child is — 140. c.  
 quite guarded and indeterminate, and may be applied to any child between the age of eight days and six weeks. “ † Elle ne se  
 “ souvient pas des traits du visage de l'enfant, ni de la couleur de  
 “ ses yeux; qu'il étoit blanc,” like Mignon's child to be sure; but then she adds, “ comme sont les enfans lorsque la couleur

\* “ That when she gave her deposition before the Tournelle in this process, she deposed, as she does at present, that the child appeared three weeks or a month old, when she received him; but that on account of his weakness one would not have taken him for eight days old.”

† “ She does not remember the child's features, or the colour of his eyes; that he was white, as children are when the red colour is gone off.”

“rouge leur est passée;” which is a reason much more applicable to the age of Mr. Douglas, than to the more advanced age of the child of Mignon; and she does not recollect the colour of the hair.

It is certain, that after eight or ten days are passed, there is no determinate rule for judging exactly of a child's age. The defender might be as big at twelve days old, as children usually are at twenty-one; so that it seems lost labour to expect to determine by the appearance of the child on the 22d of July, whether he was born on the 10th of July, or on the 28th of June. Mrs. Hewit in her letter describes Archibald as a lusty child; and had Mignon's child been small, they might at the end of July *been much of the same size*. But Mignon's child is always described as extravagantly large; and though we should be ashamed at this time to rest very much on the broken credit of the Mignons, yet we should remember, that there was a time, when the history of the enlevement was darted as a thunderbolt against the defender; and it is impossible to read the evidence of nurse Favre without perceiving, that she was sensibly affected with the report which came from that quarter; and that though she is too honest to speak an untruth, she has been diffident of her own judgment, and afraid of contradiction, and has not opened herself with the firmness she would have done, had she been left to herself. The same observation may be made on some of the other witnesses to the child's person. None of them remember the colour of his hair; and it is remarkable, that Mr. Breval and Mad. Blainville, who make him a month old, make him come a week too late to Michel's, when he was in reality three weeks old; and it does not appear at what time Mr. Breval first saw him.

#### S E C T. VIII.

##### *Of Mrs. Hewit's correspondence with Isabel Walker.*

Mem. pt 2.  
p. 217.

Min. 8. L.

THE pursuers memorialist supposes, that there must have been two letters from Mrs. Hewit to Isabel Walker, besides the three letters produced at the service. In this he has reason. But when he thinks it singular, that Isabel Walker should have been so careless about them, when she so carefully preserved the other three; this observation is not quite so well founded, because it is contrary to the evidence; for Isabel Walker has deposed that these letters were preserved by accident. But it seems this remark was meant to introduce a reflection on Isabel Walker, and intimate



intimate that she had spoken of letters, which were never written. One of the speakers in Almon's book, p. 303 (a), is made to remark very justly, that if there was another letter, it must have been between the 22d and 26th of July. This is the proper place to consider that point.

Mrs. Hewit begins her letter to Isabel Walker of the 26th of July with these words: "Just as I was set down to write you, I Serv. 35. A.  
" got yours write on the same day I wrote to you, which was the  
" 21st day, telling you the happy news." The learned memorialist thinks, that this paragraph shews, that it was the first from Mem. pt. 2.  
her to Isabel Walker after that of the 22d. Perhaps it will shew P. 216.  
the direct contrary.

The post went every day from Paris to Rheims, and from Rheims to Paris. Mrs. Hewit's letter written on the 21st, went off from Paris on the 22d, and was received at Rheims on the 23d; Isabel Walker's letter written also on the 21st would reach Mrs. Hewit on the 23d; and Mrs. Hewit says, she was then set down to write again to Isabel Walker. By this aukward phrase she means no more than to let Isabel Walker observe, that she had kept her promise (in the letter wrote the 21st of July) to Serv. p. 34. E.  
write soon, and had written on the 23d, and hoped the letter had come to hand.

If we look into Isabel Walker's depositions, we shall find P. P. 50. K.  
abundant matter for a long letter at this time.—The change of D. P. 367. B.  
lodgings—the sick nurse—the discussing plasters—the promise of — 369. D.  
Mr. Andrieux's money, &c. But as it is the fashion with some people not to believe Isabel Walker, we shall fetch the proof of one article from the letter of the 26th of July.

Mrs. Hewit appears to be very accurate in what relates to the children and their nurses. In her very short letter written on the 21st of July she had sent the account of the drunken nurse; in the letter of the 26th of July she alludes to the story of the bad nurse, but does not tell it; in speaking of Archibald she says, "El lock Serv. 35.  
" pour man! he is had to his nurses, but is at last got a fean on,  
" and he not a beet the wore." Here is a plain intimation, that Archibald had been in the hands of two bad nurses before the 26th of July: but how was Isabel Walker to understand this reflection, unless she had been previously acquainted with the story of the bad nurse? especially as Mrs. Hewit had hastily commended that very woman in her letter of the 22d of July. It is plain,

that the whole story of that nurse was told to the maids before the 26th of July.

There is a strange confusion attending every objection to the dates of these letters, because the objection is against common sense. Mr. Anderson has been pleased to trifle with the person lately referred to, and with the public. At page 398 he says, "The defender's hypothesis is, that the letter 22d July was written on the 21st, but dated 22d, because it was to be dispatched on that day. By parity of reason, the defender must hold that the letter of the 26th of July was written on the 25th, but dated 26th, because it was to be dispatched on that day."—This is the way, which an artful advocate will use to confound proof and hypothesis. The writer of this passage very well knows, that the defender has no hypothesis about Mrs. Hewit's first letter; he accepts the proof as he finds it; the letter is dated July the 22d, and entered in the pocket-book July the 21st; but he is not by any parity of reason led to suppose, that Mrs. Hewit's letter of July the 26th was written on the 25th: he believes that all people of business date their letters on the day they intend to dispatch them, let the time of writing be ever so premature. When he argues that the letters of this family were generally written before they bear date, he does not form his argument by a parity of reasoning from one particular case, but he grounds his opinion upon two known facts, that the post set out pretty early from Paris, and that more letters of one date appear in process than could probably have been written on the morning on which they bear date, or even in one whole day.

P. P. 50. K.

— 254. G. The pursuers are hard at search for a contradiction about lady Jane's sick nurse. Isabel Walker says, Mrs. Hewit wrote her word lady Jane had a sick nurse. Mrs. Hewit has deposed, that lady Jane was attended by the deponent and by the people of the house; nor did she choose to have any other. But if Mad. Le Brun was a garde malade, why might not one of her people be properly called a sick nurse?



## S E C T. IX.

*Of the jaunt to Versailles.*

THE blundering interpretation of the note which sir John Stewart left with Mrs. Napier, which will be mentioned in the last part, is at the highest point of the pursuers presumptive proof. —The story of this journey to Versailles is (one knows not why) mounted up to the second. In respect therefore to the rank it bears in the pursuers esteem, rather than on account of its real importance in the cause, it merits a particular consideration.

Mrs. Hewit has deposed, “ That during their stay at Paris at P. P. 253. K. “ this time, lady Jane, the deponent, and sir John Stewart, “ never went to Versailles.” Sir John Stewart has also said, Decl. 12. A. “ That lady Jane did not go out of the house to take the air till “ she went to Dammartin.”

Mad. Blainville, the widow, to whom they own themselves obliged, has, in opposition to sir John and Mrs. Hewit, given an account of one party to Versailles, and of a second round the streets of Paris, at both which the witness herself assisted. She says, that she accompanied the two ladies and the gentleman to P. P. 127. H. Versailles; that they saw the gallery and chamber of audience, walked in the labyrinth half an hour or three quarters, “ \* & — 128. A. “ que la dame parut fatiguée & s'appuyoit sur la deposante; & que “ le monsieur lui ayant proposé d'aller voir le parc, elle n'a voulu “ pas parce qu'elle étoit fatiguée; que de là ils allerent dans une “ auberge à Versailles, où ils dinerent & revinrent à Paris la même “ jour.”

This witness continues her accounts by relating, that on the next or second day after, they went to view the places at Paris; and gives a very graphical plan of her second party; and says, that in the course of this tour they stopt at Mad. Goury's, where she left word, that she was ready to enter into that lady's service the next day. She went accordingly. — 128. B.

There is nothing in these accounts, of which sir John Stewart or Mrs. Hewit could be ashamed. A little tour through the streets is a mere nothing; the trip to Versailles seventeen or

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\* “ That the lady appeared fatigued and leaned upon the deponent, and the gentleman “ having proposed to go and see the Park, she refused, because she was fatigued; after “ which they went to an inn at Versailles, where they dined, and returned to Paris the same “ day.”

Serv. 34. E.  
 — 35. C.  
 — 36. D.

eighteen days after the delivery was little more, especially as lady Jane was in private, not subject to the formalities of a lying-in, and took care to be properly cloathed : besides, she is said to have complained of fatigue, and it appears by letters written at the time, that her ladyship was rather untractable, and that she was not so strong at Dammartin as she had been on the 26th of July.

Yet there is still great reason to reject this account. There is an air of vanity and importance which reigns through every part of Mad. Blainville's deposition, and betrays a great want of understanding ; but as she may have innocently fallen into her mistakes, numerous as they are, an honest man would wish to treat her case with candor, and find the cause of them if he can.

We must commence with a remark or two.

Mad. Goury's certificate already mentioned, to which the witness herself submits, proves that she entered into that lady's service on the 29th of July 1748 ; consequently the jaunt to Versailles remains dated on the 27th, and the lesser party through the streets on the 28th.

P.P. 128. H. It is to be observed in the first place, that these are not the dates originally fixed to these stories when they were first applied to lady Jane. When Mad. Blainville was examined before the Tournelle, she told the court that she went to Mad. Goury's on the 8th of August. For this mistake she makes such an excuse as she can : in correspondence with the original date, the party to Versailles took place on the 6th of August, and the tour through the streets on the 7th.

It is to be remarked too, that the train of incidents found in Mad. Blainville's present deposition is exactly suited to this original date. The child we know was carried to nurse Favre's on the 26th of July. Mad. Blainville says, “ \* Que le lendemain  
 — 127. C. “ ou le fur lendemain la dame alla chez la nourrisse ; que n'ayant  
 “ pas parlé au monsieur ni aux dames pendant deux ou trois jours,  
 — 127. E. “ au bout de ce tems le monsieur lui proposa d'accompagner les  
 “ dames à Versailles. La deposante lui répondit, qu'elle étoit re-  
 “ tenue pour entrer en condition ; mais n'ayant point vû Ver-  
 “ failles,

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\* “ That the next day, or the day after, the lady went to the nurse's house ; that after  
 “ this she did not speak to the gentleman or ladies for two or three days, at the end of  
 “ which time the gentleman proposed to her to accompany the ladies to Versailles ; the de-  
 “ ponent



“ failles, elle retourna chez Mad. Goury pour la prier de lui à accorder une huitaine des jours.” According to this computation, sir John Stewart invited her on the 30th or 31st of July: an indulgence of a week or eight days was the precise time which she was obliged to ask, in order to partake of a party of pleasure on the 6th or 7th of August.

Let us now candidly examine the French account of this transaction.

1. We must pay due respect to the original witnesses, and enquire whether Mad. Blainville's account is credible.

2. We must see what support it will receive from Mad. Michel.

3. In order to a confirmation or refutation of sir John and Mrs. Hewit's account, we must keep a sharp eye at Mr. Michel's door, and observe whether lady Jane went out at all till she went to Dammartin.

1. Let us estimate the credit due to Mad. Blainville in this particular.

Mad. Blainville persuaded, it may be, that the facts happened in the order she had at first related them, and obliged to acknowledge that she had mistaken the dates, has been led, by an invincible error in memory, to carry back the removal of the child to nurse Favre's six days. But this is a liberty in which she cannot be indulged; the beginning of the story is as determinate as the end; and whatever she relates must be confined within the compass of three days, between the hour at which the child was carried to nurse Favre's on the 26th, and the hour at which she removed to Mad. Goury's on the 29th.

This being the case, it is plain, that the bare production of Mad. Goury's certificate renders her whole story incredible. She speaks of two visits made to the child by lady Jane; two visits which she herself made to the child <sup>a</sup> afterwards; of an interval of <sup>a</sup> — 130. H. two or three days, in which she neither saw the gentleman <sup>b</sup> or <sup>b</sup> — 127. D. the ladies; and of two days spent in parties of pleasure. It is impossible that these things can be true; the farthest point to which the most candid person can extend his belief is, to suppose that there may be some truth at the bottom, amongst a great deal of falshood. The pursuers memorialist would allow us to

“ ponent answered, that she was engaged to enter into a service; but as she had not seen Versailles, she returned to Mad. Goury's, to beg of her to allow her eight days.”

deny every other fact, provided we would admit the journey to Versailles: but he can never give any reason for this preference, except that the journey to Versailles is disavowed by sir John Stewart and Mrs. Hewit.

Most persons would think, that this denial by two people is a sufficient reason for suspecting at least, that the point they denied is the grand mistake: but, happily for Mr. Douglas, he does not rest on Mrs. Hewit's and sir John's assertions alone; Mad. Blainville has furnished proof against herself.

D. P. 304. D. Mad. Blainville says, she was obliged to ask Mad. Goury's permission to defer her entry into the service, to which she was engaged. Mad. Goury denies that she ever gave such permission. She declares, “ \* *Qu'elle Mad. Blainville. est entrée chez moi le jour ou le lendemain du jour que je l'ai retenuë; & que je ne crois pas qu'elle m'ait demandé après l'avoir retenuë quelques jours de delay avant d'entrer avec moi.*”

P. P. 127. K. Mad. Blainville herself has shewn that Mad. Goury is in the right; she says, that Mad. Stewart invited her into her service, and wished to conduct her to England; but she declined the offer, and answered, “ † *J'y consentirois volontiers si je n'avois point d'enfant; mais j'en ai deux que je ne veux point perdre de vue.*” Why did she not give the true reason, if she was really engaged in the service of so respectable a lady as Mad. Goury?

Decl. 4. E. Sir John Stewart gives a different turn to the conversation, which is much more credible when we reflect on the different rank of lady Jane Douglas and Mad. Blainville. He says, “ that the widow wanted to go along with lady Jane, but the circumstances in point of fortune she and the declarant were then in, P. P. 253. C. “ could not admit of it.” And Mrs. Hewit says, “ she afterwards offered to hire herself as a servant to lady Jane.” Whether this or Mad. Blainville's account be the most accurate, it is clear she had no fixed service before the 28th of July. Mr. Vailant too, who is introduced by the pursuers to tell us that he heard — 132. D. Mad. Blainville speak of her party to Versailles, says it must have happened before she was hired to Mad. Goury.

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\* “ That Mad. Blainville entered on my service the day, or the day after, I engaged her; and that I do not believe that she asked me a delay of some days before she entered on my service.”

† “ I would willingly go if I had no children, but I have two, which I am unwilling to lose sight of.”



Whether Mad. Blainville did or did not go to Versailles about this time, is not the subject of dispute, but whether she went with lady Jane. If she went with the company she has named, it must have been on one or other of the two last days of her residence at the Hotel D'Anjou; she knows it must, and therefore she has combined the story of the jaunt with her entry at Mad. Goury's: but this combination is purely imaginary. These two incidents are perfectly distinct, and have no connection with each other. By this means the story is divested of the only circumstance, by which the witness herself has attempted to fix it within the time of her acquaintance with sir John Stewart and lady Jane; and it remains without any intrinsic support, but the bare assertion of this visionary and unintelligible witness.

2. Mad. Blainville's account is therefore impossible, and the particular incident of the party to Versailles is liable to a special charge of inaccuracy and mistake. It is imagined the pursuers will not rest on the intrinsic merit and credibility of this witness. Their learned memorialist has slipt over all the irregularities of her dates, and relies on the supplementary proof which is brought to support the general story. Three witnesses from Mad. Goury's P. P. 132. c. have been brought to prove, that she told this story there. Mr. ——— K. Breval<sup>a</sup> says, he was told it by Mad. Blainville at the time. Mr. ——— L. a ——— 136. A. Michel<sup>b</sup> heard it too, but does not say from whence he got his b ——— 124. K. information. And Mad. Michel is as particular as the rest, and ——— 114. C. says, \* “ qu'immediatement après que la dame Favre eut pris l'en-  
 “ fant chez elle, peut-être le second jour après, ces trois étrangers  
 “ firent un voyage à Versailles dans un carrosse de remise avec la  
 “ dame Blainville, et revinrent le même jour, et en revenant  
 “ visiterent les places de Paris; que pour que Mad. Blainville put  
 “ faire ce voyage avec eux, le monsieur en allant à Versailles fit  
 “ arrêter le carrosse à la port de la dame Goury, chez qui la dite  
 “ dame Blainville devoit entrer en service le même jour, et de-  
 “ manda à la dite dame Goury permission pour la dite dame  
 “ Blainville d'aller à Versailles avec eux; laquelle permission la  
 “ dite dame Goury accorda, au moyen de quoi la dame Blainville  
 “ n'entra

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\* “ That immediately after Mad. Favre had carried the child to her house, perhaps the  
 “ second day after, these three strangers went to Versailles, in a hired coach, with Mad.  
 “ Blainville, returned the same day, and on their way back they visited the squares of Pa-  
 “ ris; that in order that Mad. Blainville might make this journey with them, the gentleman  
 “ in going to Versailles stopped the coach at Mad. Goury's door, on whose service Mad.  
 “ Blainville was to have entered that day, and asked Mad. Goury's leave for Mad. Blainville  
 “ to go to Versailles, which Mad. Goury agreed to give, by which means Mad. Blainville  
 “ did



“ n’entra à son service que le lendemain : que c’est ainsi que la dite dame Blainville *la reconta à son retour de Versailles* à la depofante.”

Of these witneffes, who plainly tell the fame story, though with confiderable variations, Mad. Michel alone deferves attention, becaufe her account is not chargeable with thofe abfurdities which appear in Mad. Blainville’s depofition ; all the incidents ſhe relates follow each other with propriety, and, except that ſhe makes nurfe Favre ſtay at the Hotel D’Anjou a night too long, all her dates are exact, and the fame which are already ſtated in the preceding ſections. Yet notwithstanding all this appearance of regularity, Mad. Michel’s account is juſt as inadmiſſible as the former.

First, Mad. Michel ſays, that Mad. Blainville told her that they ſtopped at Mad. Goury’s on their way to Versailles to deſire leave of abſence. All this application to Mad. Goury is ſeen already to be purely imaginary ; it is a circumſtance recently worked up by imperfect recollection at the end of ſeventeen years. Mad. Blainville could not poſſibly have told it at her return from Versailles, becauſe the whole fact is falſe.

D.P. 133. G. Next we may obſerve, that Mad. Michel dates the party to Versailles on the very day before Mad. Blainville left the houſe, that is on the 28th of July. She cannot make her ſtory conſiſtent, if ſhe gives it any other date. But Mad. Blainville herſelf abſolutely denies that ſhe went to Versailles on that day ; ſhe ſays ſhe was abroad twice, and that the party to Versailles was previous to the little tour through the ſtreets. Her daughter, who ſays ſhe was of the laſt party, never went to Versailles. It is plain therefore, that there is ſtill ſuch confuſion in theſe accounts, as totally deſtroys their credit.

3. It may perhaps be thought by ſome, that though the account of the journey to Versailles, and other jaunts mentioned by Mad. Blainville are confuſed, contradictory, and cannot all be true ; yet that it may have happened ; and that at leaſt it appears by the French witneſſes that lady Jane went abroad, which is contrary to the aſſertions of ſir John Stewart and Mrs. Hewit.

P.P. 141. F. It is very true, that the witneſſes at Michel’s have agreed that  
 — 140. F. lady Jane went abroad : it is alſo true, that nurſe Favre, who ſlept

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“ did not enter into her ſervice till next day ; and that it was in this manner that Mad. Blainville mentioned the affair to the deponent on her return from Versailles.”



four nights in the closet within lady Jane's chamber, and was more conversant in her apartment afterwards than any other witness in process, (for the maid who waited on lady Jane is dead) never saw or heard that she went out; in particular this woman is sure, in express contradiction to Mad. Blainville, that lady Jane never came to her house to see the child.

Mad. Favre has also said, \* “ que le monsieur vint deux ou trois P. P. 138. c.  
 “ fois par jour pour voir l'enfant :” and this account is confirmed  
 by her husband; he says † “ que pendant que cet enfant étranger D. P. 136. x  
 “ étoit chez lui à Paris, sa femme lui a dit, que le pere de l'enfant  
 “ est venu souvent voir l'enfant, quelques fois deux fois par jour;  
 “ & qu'il n'y avoit pas de jour qu'il n'y vint plutôt deux fois  
 “ qu'une” This is more than negative proof. The affirmation  
 of these people that sir John came to see his child every day, and  
 generally twice a day, is positive; and it is directly contradictory  
 to Mad. Blainville's assertion, that sir John Stewart was absent a  
 whole day on the party to Versailles.

But we need not go out of the hotel d'Anjou for a full refutation of all these stories; these very witnesses themselves have signed to their own disgrace. Mad. Blainville has given a particular description of this apartment, which deserves to be reconsidered on this occasion.

Mad. Blainville had done the family some service on the evening on which the child was brought; from that evening till the child was carried to nurse Favre's, she never went into lady Jane's room; she never saw the child a second time at Michel's; and nurse Favre neither saw her or heard of her: it is plain therefore, that all her observations were made, as she says they were, P. P. 139. L.  
 after the child was gone to the nurse's house, that is, after the 26th of July. It is certain then, that the following observations on lady Jane's room were made by this witness on the 27th and 28th of July.—She says, “ ‡ que les fenêtres de sa chambre — 129. B.  
 “ furent toujours fermées jusqu'à sa premiere sortie pour voir

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\* “ That the gentleman came two or three times a day to see the child.”

† “ That during the time that the foreign child was in his house at Paris, his wife told him, that the child's father came often to see the child, sometimes twice a day, and there was no day on which he did not come oftener twice than once.”

‡ “ That the windows of her apartments were always shut until she went abroad first to see her child; and that the deponent and Mr. and Mad. Breval said to each other, that they were not surprised that the windows of the apartment were always kept shut, because the air is not good for a woman newly brought to bed.”

“ son

“ son enfant ; & que la deposante Monsieur & Mad. Bréval di-  
 “ soient entr’eux, qu’ils n’étoient pas surpris que les fenêtres fus-  
 “ sent toujours fermées, parceque l’air ne valoit rien pour les  
 “ femmes nouvellement accouchée.” Mad. Blainville herself is  
 not so absurd as to place lady Jane’s visits to the child and the  
 journey to Versailles at the time the chamber was in this close con-  
 dition ; she places them successively on the fifth or sixth days after  
 the chamber was open and aired : but Mad. Goury’s certificate,  
 which Mad. Blainville had not seen when she was first examined,  
 has brought these adventures back to the very day on which Mad.  
 Blainville observed that the chamber was close and hot, and that  
 lady Jane took care of herself like a lying-in woman.—Let the  
 warmest prosecutor of Mr. Douglas stand forth, and make this  
 assertion consistent with the journey to Versailles on the 27th of  
 July, on the very day after the child was sent to Favre’s.

We have therefore the testimony of Mad. Blainville, which she  
 confirms by an appeal to Mr. Breval, joined to that of nurse Favre,  
 that lady Jane did not go out of her sick chamber before the 29th  
 of July ; and as to what passed after this busy woman had left the  
 house, we have only to observe, that not one of the French wit-  
 nesses, except nurse Favre, pretends to recollect a single circum-  
 stance of the conduct of sir John Stewart and lady Jane till they  
 quitted the hotel.—This is a striking proof that the memories of  
 the other witnesses have been recently assisted by Mad. Blain-  
 ville’s visionary imagination.

It is clear then, that lady Jane did not go out to take the air till  
 she went to Dammartin : to conclude therefore this tedious dis-  
 quisition, let us sum up all that has ever been said about Ver-  
 sailles.

In 1756 Mad. Michel said, that Mad. Stewart kept her bed on  
 account of her being lately brought to-bed, as she believes, some-  
 where nigh Versailles. In October 1762, when she was reminded  
 of the account she had given eight years before, she said the fact  
 did not pass as it was reported, but that four or five days after her  
 arrival (that is, when she had ceased to keep her bed) she went  
 with sir John and Mrs. Hewit, and fetched her child from some  
 place near Versailles. This second account the Michels give up,  
 in complaisance to sir John’s declaration. Sir John had said the  
 nurse came from St. Germain’s, and therefore the child must come  
 from St. Germain’s too. About the same time Mad. Blainville  
 came

P. P. 4. F.

Ap. D. Mem.  
 P. 29,



came into conference: she did not pretend to know where lady Jane was brought to-bed, or from whence the child was brought; but she remembers that she went with lady Jane in a party of pleasure to Versailles: then the Michels change their story a third time; all they themselves had recollected about Versailles is a mistake, and they too remember it was a party of pleasure.

But when did this party of pleasure take place? This point was easily settled in 1763: lady Jane was thought to have been four or five weeks at the hotel d'Anjou: Mad. Blainville herself thought she had staid there till the 8th of August; the party to Versailles was dated a day or two before she went, when lady Jane had been delivered near a month, and every thing which the witnesses were then inclined to say, was reduced into order and consistency.

When Mad. Goury's certificate was discovered, all these stories were thrown into confusion: Mad. Blainville, though she admits the authority of Mad. Goury's register, and owns that she left Michel's on the 29th of July, goes on with her tale in direct contradiction to this written evidence, which she herself avows to be true. The Michels correct their erroneous dates, but give up none of the facts, and by that means they remain dated in opposition to what they and every other witness in process have uniformly said of the state of lady Jane's health.

This is not all; Mad. Goury and her maître d'hotel declare, that this party did not happen after Mad. Blainville had engaged in that lady's service: what then can we do with it to save the credit of these witnesses, but bring it back to the time at which Mad. Michel has first dated it in 1756, to the time when lady Jane arrived at Michel's? But then the party was made with some other company, for Mad. Blainville was not introduced to lady Jane till after the child was brought. This seems to have been the real case: Mad. Michel combined lady Jane and Versailles, through defect of memory, in 1756, and has puzzled herself ever since.

The French evidence, as far as it agrees with Mrs. Hewit, is clear and consistent, and at all times invariably the same. All these witnesses have always said, and still say, that lady Jane's whole appearance and conduct was that of a woman recently delivered. The Michel family below stairs believed for more than fourteen years, from July 1748 to October 1762, that lady Jane kept her bed during the first four or five days that she lodged at the hotel d'Anjou. Nurse Favre and Mrs. Hewit were in the cham-

ber, and are surer witnesses; they agree that lady Jane was not much in bed; but all above and below stairs agreed till this process began, that she never went out; and nurse Favre says the same now. When the nurse left the apartment, Mad. Blainville came in, and she also attests, that lady Jane's room was kept constantly close like a lying-in chamber. After Mad. Blainville was gone on July the 29th, the nurse made frequent visits with the child, and assures us, that Lady Jane kept her room, had a particular diet, and did not eat and drink with the family till she arrived at Dammartin.

This part of the French evidence is perfectly consistent, and agrees with sir John and Mrs. Hewit; it is a full proof of lady Jane's convalescence, and of Mrs. Hewit's integrity.

## S E C T. X.

*Of the journey to Dammartin.*

P. P. 117. 1. **I**T is time to take our leave of the Michels. Mad. Blainville left Michel's on the 29th. It appears by the books, that one Mr. Clavaros took the apartment occupied by sir John on the 31st of July; and Mad. Michel deposes, that he did not come to reside in it till some days later. Mad. Michel supposes, that sir John and lady Jane staid ten or twelve days after the departure of Mad. Blainville; Mr. Michel says seven or eight days.—Nurse Favre<sup>a</sup> thinks she kept the child at her house two or three weeks. These numbers are all too large: and so are all the parole computations of the residence of lady Jane at Dammartin. The pursuers learned memorialist, as if he were afraid ever to be exact, parades with these latter numbers in detail, which he calls a proof that they left Michel's on the 31st of July; for the departure from Dammartin to Rheims is fixed by written evidence, which cannot be disputed.

— 115. B.

— 115. L.

— 122. K.

— 138. C.

Mem. pt. 3.  
p. 180.

Serv. 35. c.

P. P. 139. c.

— 531.  
No. 30.

Mrs. Hewit says in her letter to the maids of the 26th of July, that they were to go in eight days; so that if they kept to their intention, they set out on the 3d of August. Their departure could not be later than the 4th; because nurse Favre says, that her child, whom she carried thither in good health, died “ au bout de 4 jours de maladie;” and it appears by the parish register, that he was buried the 9th of August;—he died on the 8th.

Mrs.



Mrs. Hewit says, the doctor advised them to go into the country for air. Nurse Favre says, that as she could not accompany the strangers to Rheims, and they could find no other nurse who would, she advised them to go to Dammartin, which was her native place, where she had many acquaintance, and where they would more easily find a nurse to their wish. And thus after they had resided fifteen days in an hotel garnie, where, as the pursuers confess, sir John left his name in his own hand-writing; after they had trusted their child to the first nurse proposed by Mad. Michel, they now follow this woman, of whom they know little, to a place they know less. All this indifference the pursuers think perfectly consistent with the secret guilt of having stolen the child they carried with them.

## S E C T. XI.

### *Of the persons of Lady Jane and the child at Dammartin.*

THE only fresh witness of what passed at Dammartin is Mad. Daux, who is adduced by the defender. She describes lady Jane thus: “ \* qu’elle avoit l’air pâle; qu’elle avoit une coëf-  
 “ fure ronde & plate, telle qu’en porte une femme convalescente,  
 “ comme elle en avoit l’air; & sçait que 7 ou 8 jours après que  
 “ la depofante l’eut vue, elle paroiffoit se porter un peu mieux.” —  
 Of the child she says, “ † qu’elle l’a tenu dans fes bras, & qu’il lui  
 “ paroiffoit avoir environ 2 ou 3 mois, fans pouvoir neanmoins  
 “ affurer quel age il avoit.” The child it seems is finely grown with the country air. Mad. Daux says, she saw Mad. Stewart four or five days after her arrival; which could not be later than the 7th or eighth of August, when Mignon’s child was forty days old, and Archibald twenty-eight. It is not to be expected, that at this period she could tell the child’s age with the precision required in this process; yet she might certainly have made a better guess. The next witness will make ample amends.

\* “ That she had a sickly appearance; that her head was dressed in a round and flat manner, as a woman recovering from an illness, as she appeared to be; and knows, that seven or eight days after she had seen her, she appeared in better health.”

† “ That she had him in her arms, and that he appeared about two or three months old, without being able nevertheless to say precisely what age he was.”

D.P. 139. F. Mad. Daux goes on, “ ‡ que cet enfant étoit brun, mais qu’il pourroit avoir changé avec l’age.” This is the language of the pursuers. We should however observe, that the child was still in the hands of nurse Favre; when Mad. Daux saw him; and that nurse Favre swears he was *white* at the very same time that Mad. Daux swears he was *brown*; whence we may judge what dependence is to be had upon the observations of these witnesses.

## S E C T. XII.

*Of Sir John Stewart's return to Godefroi's.*

P.P. 64. B. **O**N the 7th of August lady Jane notified in her own hand to his grace the duke of Douglas the birth of her two sons on the 10th of July.

Decl. 2. B. On the 8th of August sir John returned to Paris by himself. His business seems to have been to take up money and see his child. It is remarkable, that sir John in his declaration has totally forgot this journey in August, and mentioned another from Rheims in the June preceding, which is purely imaginary.

Mr. Andrew Stuart once acknowledged, that he could not conceive that this mistake, great as it is, was meant to serve any purpose in the cause; though at present the pursuers seem desirous to make it the ground of a presumptive argument.

P.P. 113. G. Sir John lodged at Godefroi's, at the very house where it is alledged he had been with lady Jane on the 10th of July. If he had really supposed a child, can it be thought that he would ever have put himself in the way of this man, through whose hands all his letters from Rheims, which had congratulated him on the birth of the children, had passed? who had himself a daily correspondence with the people of Rheims, and who must probably before this have been informed from thence of the news which had been received there? One of the speakers in Almon's book mentions, that sir John and lady Jane did not go to Godefroi's to lodge when they returned to Paris in November 1749, as a presumptive argument of their desire to conceal themselves from Godefroi, on account of their having been in his house on the 10th of July: but certainly sir John's return to that house in

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‡ “ That this child was of a brown complexion, but that he might have changed with age.”



August, recently after the delivery, is an infinitely stronger presumptive argument of his innocence, than the other of his guilt.

The money, which sir John drew for at this time, was only an advance of a quarter's allowance from the duke of Douglas. There will be occasion to mention it again presently. He went at this time to see Sholto. Mrs. Hewit writes thus to Isabel Walker the 12th of August: "Mr. Stewart is seeing him jost now, Serv. 36. A.  
" and I got a letter this day tellen he hopes he will dow very  
" well, and that the nurse is the most carefoll womin he iver sa,  
" and that he is now queet content to live him with her."

## S E C T. XIII.

*Of nurse Mangin, and the number of nurses.*

ABOUT the time sir John went to Paris, lady Jane procured a nurse for Archibald, whose name is Mangin, the wife of a farmer's labourer. As an instance how little the memory is to be trusted in the computation of a distant period of time, one may observe, that nurse Favre computes about nine or ten days residence at Dammartin before they found the new nurse; and Mangin says, they staid at Dammartin a fortnight or three weeks after the child was under her care. These numbers added together make the residence at Dammartin as long as the whole time from the entry at Michel's to the return to Rheims.

This woman, Mangin, who received the child at the beginning of August 1748, and continued with him till he was weaned, is usually reputed by way of excellence, *Archibald's nurse*. Mrs. Serv. 14. B.  
Hewit deposes on the service, that they got the nurse for Archibald, the eldest boy, at the village near Paris, to which they went. Sir John has said, that the landlady at Dammartin prevailed with Dec. 9. C.  
different women from time to time to suckle the child out of a principle of humanity, till at last they discovered and got a very good nurse, who then happened to be reaping the corn.

Were we to add sir John's account of the intermediate milk-women to the computations of mesdames Favre and Mangin, we might prolong the residence at Dammartin to the end of the summer. But the truth is, sir John was absent from Dammartin some days, and probably got his milk-women by report; for nurse Favre says, she nursed the child till the new nurse was found. Is P. P. 141. C.  
this mistake of importance in the cause of Mr. Douglas?

Mad.



D. P. J41. c.

Mad Mangin says, \* “ que Mad. Stewart avoit l’air pâle & delicate, comme une personne relevant de maladie; mais qu’elle paroïssoit se porter mieux, et avoir un peu plus de couleur, lorsqu’elle quitta Dammartin:—que l’enfant, dont elle fut chargée, lui paroïssoit avoir un mois ou environ, parcequ’il étoit extrêmement petit.” This nurse has made a good guess, but it should be noticed, that she attended the child till he was weaned; and as she doubtless learned the day of his reputed birth from the maids, it is not likely that she should give an account of his age, which would not correspond to what was told her.

Archibald is now in the hands of the fifth and last woman, who had the care of him. Mrs. Hewit says, the 12th of August, in her letter to Isabel Walker, “ For our dear little man that is with us, he has been the most unlucky poor dear in his nurses; no less has he had than five all good milks, but base jades would not come along with us for love nor money. We was in such a way, that Mr. Stewart was to a-gon to Reims & brought up on with him, when luckily we got this woman, who came from Sedan to the shiring &c.”

The pursuers learned memorialist finds as many meanings in this short passage, as there were meals in lord Peter’s loaf. He observes that Mrs. Hewit says, 1st. Archibald had six nurses; and 2dly, She says of the five nurses she there mentions, (which were six in the preceding paragraph) that all of them were good milks:—and 3dly, That none of the nurses, base jades, would come along for love or money. These three assertions the learned memorialist says are false; and so they are, but not one of these assertions are to be found in Mrs. Hewit’s letter. Mrs. Hewit complains, that the maids could not *rid her writ*; but if the bulky volume, called Memorial for George-James duke of Hamilton, is not worn out before the cause be determined, posterity will hardly believe, that so plain a passage could puzzle sir A. F.

For the sake of good Mrs. Glass, whom every honest man must love for her integrity, one will try to spell out the meaning. Mrs. Hewit says, “ for our dear little man who is with us, he has been the most unlucky poor dear in his nurses.” So she had said before; for in her first letter to the maids she mentioned one bad nurse, and in her second she mentioned two.—She goes on, “ No

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\* “ That Mad. Stewart had a pale and delicate appearance, like a person recovering from an illness; but that she appeared better, and had a little more colour when she left Dammartin; — that the child, which was given to her, appeared to her about a month old or thereabout, because he was extremely little.”



“ less has he had than five.” Very true still.—There is the milk-woman one—the drunken nurse, recommended by Mad. Le Brun, two—the nurse from St. Germain’s, who had no milk, three—nurse Favre four—nurse Mangin five. One would hope that this would pass; and that the memorialist might be left to find his sixth where he can. She proceeds, “ All good milks, but base jades “ would not come along with us.” Exactly true to the end. But we find, our profound logician is willing to turn verbal critick and correct the text: he would read the passage thus, “ No less “ than five, all good milks; but base jades they would not come “ along with us.” But the text is right, and there is not a letter wanting, “ All good milks but base jades would not come along “ with us for love or money” is perfect sense; for certainly “ All “ good milks” are words in the nominative case, and mean *All women who had good milk*; yet these women were not Archibald’s or Sholto’s nurses, (unless nurse Favre, and perhaps nurse Garnier, may have their share in the reproach) but those other numerous women, who were applied to from first to last to take care of the children and go to Rheims, and were therefore never employed, because they would not go; of whom the learned memorialist may read at large, not only in Mrs. Hewit’s letters, but in the depositions of nurse Favre, and nurse Favre’s husband; and be satisfied, that till they found nurse Mangin, not one good milk would go along with them for love or money.

Serv. 34. c.  
 — 35. B.  
 — 36. A.  
 P. P. 138. E.  
 — 135. F.

One word more on the subject of these nurses, and then we have done for ever. The defender has great reason to complain of the injurious representation of sir John Stewart’s and Mrs. Hewit’s depositions in the pursuers memorial. The memorialist is pleased to say, “ That the accounts given by them are here placed in “ two opposite columns, that they may be the more easily com- “ pared.” But surely the learned prosecutor must be very diffident of the arms he bears, when he could submit to such a subterfuge as that, of which he here avails himself. He has so contrived his volumes throughout, that when sir John is produced as speaking of one woman, you must read in the opposite column what Mrs. Hewit is saying of another. Let us observe how prettily these accounts are disposed. When sir John speaks of the drunken nurse; in the opposite column is printed Mrs. Hewit’s account of nurse Mangin. When sir John’s account is advanced as far as nurse Favre, there is a blank in Mrs. Hewit’s column to signify, that she has said nothing about that nurse: then sir John’s account of nurse Mangin (or Manger, as he calls her) is contrasted with Mrs. Hewit’s account of the nurse who had no milk.

Here

Mem. pt. 2.  
 P. 184.



Here sir John's column ends; and Mrs. Hewit's account of nurse Favre, whom she does not name, is left to stand by itself. The accounts from the letters follow next. Sir John's column begins with his account, that Archibald had changed his nurse three times on the 6th of August; opposite to which may be read how Sholto got a good nurse at first; which is the more remarkable, as there is a separate parallel, intitled, *Accounts given of the nurse of Sholto*. We may observe too, that lady Jane's account that Archibald had changed four nurses, is printed in Italicks, and opposed as a contradiction to Mrs. Hewit's account, that the child had had no less than five. The learned author of this memorial must be a very extraordinary œconomist, if he can change his cloaths four times without having five suits. In short, there is but one inaccuracy in the number of the nurses: lady Jane says in a letter dated in February 1749, that Archibald has changed *three nurses*, when she should have said four. This has been mentioned once already, and the memorialist is welcome to make the most of it. Mr. Anderson has been pleased to spend eight pages of his laboured performance, from p. 421 to 428, in retailing the learned memorialist's criticisms on Mrs. Hewit's letters and accounts of the nurses: all he has said is answered already. It is no discredit to a writer in Edinburgh, that he has fallen into the snare, which was laid for him by sir Adam Ferguson.

The writer of these papers flatters himself, that he has fulfilled his engagement, and shewn that sir John and Mrs. Hewit are very consistent and exact in their accounts of the number and characters of those women, who had successively the care of the eldest child.

## S E C T. XIV.

*Of the return to Rheims August 16.*

SIR John seems to have returned from Paris on the 13th of August; and, after resting a day or two, he proceeds with lady Jane, Mrs. Hewit, the child, nurse Mangin, and the nurse's husband, for Rheims. It appears by Mad. Mayette's household-book, that they entered into their new lodgings with her on the 16th of August.

P. P. 139. B.  
D. P. 57. E.

Serv. 14. C.

— 20. E.

Mrs. Hewit and Isabel Walker have mentioned in their depositions on the service, that nurse Mangin's child was carried to Rheims. The child was really left behind; and the mistake seems to have arisen from their recent perusal of Mrs. Hewit's letter



letter of the 12th of August, in which she says they intended to bring the child. Isabel Walker has found her mistake and corrected it. Errors at this period cannot affect the cause of Mr. Douglas; they cannot possibly be intentional; and they serve rather as apologies for such mistakes as the same witnesses may have committed in an earlier period, than as proofs of artifice. In justice to Isabel Walker it should be observed, that she has been examined four several times; and that this is the only known mistake, into which she has fallen.

## S E C T. XV.

*Of the Family's silence about their situation.*

HAVING now stated the most material facts, which happened during the time the family were absent from Rheims, it remains, that we pay a proper respect and attention to a capital argument of the pursuers, taken from sir John Stewart's obscurity and concealment at Paris. This argument rests on three points.—1st. The silence of the family with respect to Mr. La Marre, Mad. Le Brun, the place of the delivery, and the youngest twin.—2d. Their neglect of their acquaintance and countrymen.—3d. The dates of their letters.

1st. In order to judge, how far a suspicion may be justly grounded on the silence of the family with respect to their own concerns, we should see, what right the persons, with whom they lived at Paris, had to be informed of them.

The persons, who appear to have seen the family or some of them during this period, are Mr. and Mad. Godefroi, inn-keepers; Michel, a barber, and his wife; Breval, his journeyman; Mad. Blainville, a chamber-maid; two nurses; Mad. Daux, the Dammartin carrier; and Mad. Pelletier, who keeps a coffee-house. It cannot be imagined, that sir John and lady Jane were under any obligation either of friendship or politeness to make a formal communication of the circumstances of the delivery to persons of this inferior rank. Had lady Jane travelled with servants, they would probably have known the whole history; and if it should appear, that without this customary means of conveying family anecdotes, they were one or other of them informed of the greater part of what had passed, it is impossible to conceive, that sir John and lady Jane had any intention of concealing it.

P. P. 102. L.

— 96. 1.

To begin with Godefroi, he says, that his wife saw from the beginning, that Mr. and Mad. Stewart “\* ne devoient pas rester “ dans son hotel.” He says, that Mr. Stewart mentioned his waiting till his new lodging was cleaned of bugs. If this be true, Mr. Stewart could never mean to conceal from Godefroi the place of his new residence; because he plainly exposed himself to Godefroi's inquiry, who might, and ought in good manners to have offered his service to procure him a better lodging: so that if Godefroi, as he says, did never know where sir John Stewart went to lodge, it is plainly his own fault. He received all sir John Stewart's letters from Rheims, during the whole time the family were absent; and if we may credit Mad. Pelletier, sir John was to be heard of at Godefroi's for the space of two and a half or three months in the summer 1748, that is, from his first arrival in July to his last visit in October with general Macelligot and Mr. Hay. Can we believe that sir John designedly concealed himself from Godefroi?

— 96. H.

— 458. H.

— 459. B.

— 458. F.

Mad. Pelletier confounds sir John's several journies to Paris in 1748 and 1749, and is very irregular in her dates; yet she remembers particular facts: she knows that Mad. Stewart was at Paris in 1748: she was told of the journey to Dammartin, and helped sir John to buy play-things for the child.

— 114. K.

D. P. 139. D.

— 139. C.

At Michel's sir John made enquiry about bugs; and though the people did not know where lady Jane was delivered, they plainly considered the place of delivery as distinct and different from the hotel de Chalons. They were misled by the appearance of the country nurse; and who could help it? Mad. Daux knew, that lady Jane was delivered at Paris; and though she lived at Dammartin, she had frequent communication with nurse Favre when she went to Paris, which she did at least twice a week.

P. P. 114. L.

— 129. L.

The witnesses are in general agreed, that they never knew the accoucheur or midwife, who delivered lady Jane. Mad. Michel says she never asked, and gives a pretty odd reason why she did not: “\* qu'elle auroit pu le demander à la dame, si la dite dame “ eut mieux parlé François.” This is the only time, that it has been insinuated, that lady Jane could not be understood when she spoke French. Mad. Blainville with the rest says, she never saw either physician, chirurgion, or accoucheur visit lady Jane; but

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\* “ Were not to remain in his house.”

† “ That she might have been able to ask it of the lady, if the lady had spoke French “ better.”



in this she is contradicted by Mad. Michel, who swears, “ \* que P.P. 114. H.  
 “ la dame Blainville lui a dit dans le tems, qu’il étoit venu un  
 “ medecin ou chirurgien, ne sçait lequel des deux.”

Mad. Daux remembers, that nurse Favre told her lady Jane was D.P. 139. E.  
 delivered of twins. Nurse Favre owns, that she thought so; and  
 this particular could not arise from any recent insinuation on the  
 part of Mr. Douglas; because nurse Favre told it to Mr. Buhot and  
 Mr. Stuart in October 1762, before the defender’s agents arrived — 1032. C.  
 in France. Indeed the account of the manner, in which she learnt  
 that the child was a twin, is altogether incredible; because Mrs.  
 Hewit never spoke a word of French in her life: and yet, useless  
 as this account is, it is not fairly represented in the pursuers proof.  
 It is there printed thus: “ † que dans ce tems là même, elle a P.P. 141. G.  
 “ entendu la demoiselle de compagnie, caressant l’enfant, pronon-  
 “ cer ces mots, *cher, cher, & doux*; par lesquels mots la deposante  
 “ a conjecturée, que la dame avoit accouchée de deux enfans.”  
 These words should have been printed *chers, chers, deux*.

It is remarkable, that this circumstance of twins is the only  
 particular relative to the children, which Mad. Favre acknow-  
 ledges, of all those which Mr. Buhot and Mr. Andrew Stuart have  
 minuted down in her name from the conference at Compeigne on D.P. 1032. A.  
 the 15th of October 1762.

Much appears in Almon’s book about lady Jane’s neglect of her  
 youngest child. Mrs. Hewit has said, she never went to see him  
 during her stay at Paris; and in her letters to the maids has re-  
 peatedly said, that she and sir John were at pains to conceal the  
 weakness of the youngest child from lady Jane on account of her  
 weak state of health. She has said also, that lady Jane never went  
 out, being weak. Those, who suppose she has wilfully suppressed  
 the jaunt to Versailles, ought to have reflected, that the same bad  
 principle would have led her to frame many visits to the children;  
 and if they impute her denying the jaunt to Versailles to a defect  
 of memory, Mr. Douglas has a right to avail himself of the same  
 failing, and presume that she has forgot the visits to the child.  
 But Aristotle has long since taught us, that scenical probability is  
 one thing, and truth is often another. The learned memorialist  
 and Mrs. Hewit have acted their several parts equally well in their  
 different departments.

\* “ That Mad. Blainville told her at the time, that a physician or surgeon, she does not  
 “ know which, came to see them.”

† “ That even at the time she heard the dame de compagnie caressing the child pronounce  
 “ these words, *Cher, cher, & deux*; from which the deponent conjectured, that the lady  
 “ was brought to bed of two children.”



It is plain, that sir John and lady Jane acted naturally, and without affectation or concealment among the French, in what relate to themselves or their concerns. These people at Paris and Dammartin might have known more, if they had asked it; and probably did know more at the time, though they have forgot it; and they do not seem to have been either inquisitive or talkative. However, it is proved, that one or other of them had picked out of lady Jane and sir John Stewart's conversations thus much; that lady Jane was delivered of twins at Paris, and in a house infected with bugs, which was consequently after she left the hotel de Chalons, and before her entry at Michel's; and that the doctor, supposed to be the accoucheur of lady Jane, visited her at Michel's.

## S E C T. XVI.

*Of Sir John's neglect of his countrymen.*

**T**HE next mark of concealment is sir John's neglect of his countrymen, or in the style of a learned speaker in Almon's book (a) "keeping himself free from the haunts of his country-men." It is difficult to know, in what part of Paris these haunts of the Scotch were in July 1748. The defender has procured a certified list of all the English, Scotch and Irish strangers, whose names are found in the registers of police for that month. They appear to be a mixture of young men just come from school, and tradesmen, and marchandes des modes pour des affaires; scarce any of them can be suspected of being known to sir John.

D.P. 1036. H. Dr. Brisbane, one of them, has been examined. He says, he came to Paris in May 1748, and that his first lodging was, as he thinks, at one Villemont's; but it does not appear in Villemont's book till the 18th of July following; so that there is a doubt how far his memory may be trusted as to the time of his entry. He says that when he came first, there were some Scotch gentlemen there who had been in the late rebellion; that there were very few British there all that time, except these gentlemen; but that the numbers gradually increased; and they came over after the peace, i. e. after the 28th of July, N. S. when the first packet-boat sailed from England. He gives a short list of his acquaintance, not one of whom appears in the books of police for the month of July; so that it does not appear, that there was any general resort of British at this time in Paris, with whom sir John could associate. Dr. Brisbane did not see sir John Stewart.

— 384. A.  
— 1038. A.  
— 384. A.  
P. P. 384. E.

(a) Lord President.

The



The pursuers have condescended on the names of several particular persons, to whom they think sir John ought to have been known at this time.

The first is Principal Gordon, who deposes, that he never saw P. P. 26. c. sir John nor lady Jane at any time in his whole life : of what consequence is the evidence of such a witness ?

Mr. Riddoch, procureur of the Scotch college deposes, that — 57. I. he did not see sir John Stewart at Paris, either in 1748 or 1749 : what are we to conclude from this deposition ?

Sir William Stewart and his lady, the antient friends of sir John and lady Jane, were at Paris in July 1748 : these witnesses are of a very different class from the last, and deserve to be heard. Sir William says he saw sir John at Spa in 1747. From that time D. P. 161. c. he neither saw sir John nor corresponded with him, till after — 162. E. lady Jane's delivery. He further deposes, " That he does not — 161. F. " remember, whether he told colonel Stewart at Spa or at Aix, — 161. E. " that he this deponent and his lady were going to Paris ; but " the deponent did tell him at Spa, that he was to return to Italy, " from whence they had come the year before." From hence it appears that colonel Stewart could not possibly suspect, that sir William and his lady were at Paris ; he must have thought they were in Italy. When the pursuers are drawing consequences, why do not they accuse sir William of a plot for coming to Paris, when he had said he should go to Italy ? This conduct is just as open to suspicion as sir John Stewart's, who said he was going to Geneva, and altered his mind and went to Paris.

The chevalier Johnston is another witness, who did not see sir P. P. 53. H. John or lady Jane at Paris in July 1748 ; at which we shall be less surpris'd, when we are told by him, that he was not at Paris in the summer 1748. But as he was only two leagues from Paris, a speaker (a) in Almon's book, page 88 and 89, is of opinion he ought to have been called for, and that he was a fit man to have an eye on the management of the youngest child. This objection requires us to consider the circumstances of this Mr. Johnston. He was a relation of Mrs. Hewit ; she had recommended him to lady Jane Douglas, and her ladyship had out of friendship for Mrs. Hewit taken him under her protection, and enabled him to — 56. I. escape out of England after the rebellion, under a feigned name,

(a) Lord President.

P. P. 55. A. <sup>a</sup>s her servant. He was frequently with Mrs. Hewit and lady Jane  
 —54. D. <sup>a</sup>t the Hague, and they were desirous to do him such little  
 services as lay in their power ; but he was never in the confidence  
 of the family ; he was never trusted with the secret of the mar-  
 riage ; nor did he know or even suspect it, till Mrs. Hewit in-  
 formed him of the birth of the children by a letter from Rheims ;  
 so that it is not at all likely, that sir John ever dreamt of en-  
 gaging this person, whom he kept at a distance, in the care of  
 his child.

The general reason, why sir John and lady Jane chose to live retired at this time, is very obvious. They were ill cloathed, ill lodged, and ill attended. But there was a separate motive, which respected Mr. Johnston and others of his party, who formed the greater part of the British then resident at Paris. Sir John's own principles were greatly mistrusted by the duke of Douglas ; and it was his business to give as little offence to his grace as possible. Had the duke enquired, as in humanity he ought, into the state and condition of his young relations, who had certainly never offended him, and found his nephew under the care of an exile ; this circumstance would have added fuel to his wrath, and sir John and lady Jane could never have hoped to be forgiven. Those gentlemen therefore, who condemn sir John and lady Jane for not trusting their child with Mr. Johnston, do plainly blame them for one of the most discreet and prudent actions they ever did in their lives.

The last witness of the pursuers in this class, who was at Paris, and did not see sir John or lady Jane, is Mr. Patullo, of whom there is nothing more to be said, than that he was distantly acquainted with sir John Stewart ; and that it does not appear, that sir John knew he was at Paris, or would have desired his acquaintance if he had.

We cannot help making one general remark on these and all others the supposed acquaintance of sir John and lady Jane then at Paris : (Sir William Stewart and his lady are out of the question, as it is impossible that sir John should ever suspect that they were there.) They are all men ; there is not one woman in the list ; men, especially of a rank so much inferior to the lady as these were, do not usually expect to be called into her bed-chamber when she is in labour. Had sir John Stewart wished to circulate a false report, all these persons were ready instruments of his will. They might have seen lady Jane in bed ; they might have played with the child and retired, highly flattered to tell the world the  
 happy



happy news. Sir John made no use of them, and this very circumstance is a strong presumptive proof, that every thing was fairly done, as it is related.

The pursuers catch at the negative testimony of sir John and Mrs. Hewit. Sir John says, that at this time he had no communication with his countrymen, nor opportunity to see them. Decl. 10. K.

Mrs. Hewit says, that during their stay at Paris, lady Jane received no visits from any of her countrymen, nor saw any of them. These expressions are true in the general sense, in which they are meant; to press them more, is to turn them into nonsense.—Sir John Stewart mentions Mr. Conn, a Scotchman, whom he saw at the coffee-house; and Mad. Stewart of Ardsheel has reported what she heard from her late husband, that he visited lady Jane at Paris, and she shewed surprise at his visit. Serv. 14. E.  
Decl. 8. A.  
D.P. 391. F.

The pursuers make enquiry of several witnesses to prove, that Ardsheel never told them, what he is said to have told to his wife. It is equally true, that general Macelligot and Mr. Hay never told them what they certainly knew, that lady Jane was said to have been delivered of twins in Paris. The whole of this argument on the part of the pursuers seems to arise from a false expectation. These gentlemen suppose, there must have been as much talk about Mr. Douglas in 1748 as in 1761; and that a younger son of a younger brother of sir George Stewart of Grandtully would engage the publick attention, as much as the heir of the house of Douglas. They need but reflect on their own conduct, and they will learn their mistake.

## S E C T. XVII.

*Of the dates of letters written at Paris and Dammartin.*

THE last branch of this presumptive argument arises from the dates of letters.

The pursuers have thought proper to prefix the following words to a certain part of their proof: “ Letters from lady Jane and sir John, giving an account of lady Jane’s delivery, all dated from *Rheims*, implying that she was there delivered, and concealing the journey to Paris; and depositions concerning other accounts of it.” P.P. 61. A.

The use of this curious preface is, first to insinuate, that all the letters written at Paris giving an account of the delivery, were  
falsely

falsely dated from *Rheims*. It is said, *Letters all dated from Rheims*. Next, that the pursuers had been at the pains of finding out that lady Jane was at Paris on the 10th of July, implied in the latter paragraph, *Depositions concerning other accounts of it*.

The real contents of this part of the proof are as follows; a letter to lord Crawford written before the delivery, put in ad invidiam; two letters dated at Rheims, when they were at Dammartin; seven other letters from the family at Rheims, written in 1748 and 1749, in which there is not a syllable about the place of the delivery; two or three second-hand depositions, by which it appears, that lady Jane told one person, and Mrs. Hewit another, that the children were born at Paris; sufficient of themselves to remove every suspicion, which might arise from the thoughtless and inconsiderate manner, in which sir John and lady Jane dated some of their letters.

P. P. 69. B.  
— 71. E.

The pursuers presumptive argument is this; that sir John, lady Jane, and Mrs. Hewit, had a design to conceal the journey to Paris from all their friends, by dating all their letters written at Paris and Dammartin falsely from Rheims; the crime of stealing children was a crime to be concealed from all the world; and therefore, if this had been the motive for using false dates, this motive would have influenced the dates of all their letters, except such as were written to accomplices. The pursuers plainly desire us to think thus of them by the equivocal preface prefixed to this part of their proof; and unhappily they have been so understood. An able logician in Almon's book page 89 (a) is said to have expressed what the pursuers mean. He there says boldly, "When to  
" all this I join, that all the letters wrote at that time by them *from*  
" *Paris to Britain or elsewhere* are falsely dated from Rheims, and  
" have evident tendency to make every mortal believe, that they  
" were then at Rheims, what conclusion can I possibly draw,  
" but that a story so unfairly told, cannot be connected with  
" truth?" The writer of this paragraph knew very well, that his conclusion would not follow from any less premises, than that *all the letters* written from Paris were falsely dated from Rheims. If therefore it should appear, that this assertion is false; if it should appear, that the words *by them, or their letters*, as the phrase occurs several times in the books of Mess. Almon and Anderson, are inserted ad invidiam; and if it should be notorious, that lady Jane wrote no letters from Paris; that Mrs. Hewit

(a) Lord President.

dated



dated all her letters from the place from whence she wrote; and that the letters written by sir John Stewart from Paris were not all dated from Rheims; the whole argument is answered; and we may freely submit it to the sober reflections of the learned person to whom these words are imputed, how far a story so unfairly told can ever be connected with the truth.

The following, it is hoped, is a correct list of all the letters (except those addressed to Rheims) which appear by the proof to have been written by sir John, lady Jane, or Mrs. Hewit, while they were at Paris or Dammartin.

1. Sir John to baron Macelligot, 5th of July, Paris. P.P.\*422.\*A.
2. ——— receipt to Mess. Taffin, dated Paris, 6th of July; to be sent to Mr. Kahr at Aix; and sent accordingly. — 534. L.  
— 535. A.
3. Sir John to lord Crawford, 10th of July, Rheims. — 61. G.
4. ——— to Mr. Florentin at Aix, 10th of July, without place. This is a mere cover to the letter to lord Crawford, which Mr. Florentin was desired to deliver to his lordship, if he was then at Aix, or to send to him wherever he might be removed. — 1069. C.
5. Sir John to his son Mr. Stewart, 10th of July, Rheims. — 1064. A.
6. ——— to Mr. Macewen at Edinburgh, 10th of July, Rheims. — 1064. K.
7. ——— to Mrs. Hepburn of Keith, 10th of July, Paris. Serv. 31. C.
8. Mrs. Hewit to Mr. Colvil at Edinburgh, date unknown, Paris. — 7. A.  
P. P. 298. D.
9. ——— to Mr. Douglas of Edrington, date unknown, Paris. — 372.  
Serv. 2. B.
10. Sir John to lord Crawford, 22d of July, Rheims. P. P. 62. C.
11. ——— to Mr. Robertson of Rotterdam, 22d of July, Rheims. — \*63.\*F.
12. ——— to baron Macelligot, date unknown, Paris. D.P. 350. B.
13. ——— to lady Wigton, received July the 28th, date and place as baron Macelligot's. — 353. A. D.  
P.P. 527. H.
14. ——— to Mrs. Hepburn, 6th of August, without place, post-mark Dammartin. Serv. 31. G.
15. Lady Jane to the duke of Douglas, 7th of August, Rheims. P.P.\*63.\*K.
16. ——— letter of Exchange to Mess. Coutts and Co. D.P. 997. D.  
Edinburgh, 8th of August, Paris.
17. Sir John to Mr. Robertson, 8th of August, Paris. P.P. 557. B.
18. ——— to Mr. Robertson, 8th of August, Paris. — 557. F.

By this list it appears, that of eighteen letters, of which knowledge has been obtained, nine are dated from Paris, six from Rheims, two are dated from no place, and the date and place of one is unknown, unless it was inclosed in baron Macelligot's letter.

In order more exactly to judge of the pursuers argument, it will be right, 1st. To consider their objections to the Paris list. 2dly. To recover if possible the date of those letters, where the date is not named. 3dly. To offer a conjecture on the motives for the false dates from Rheims, and the consequences which follow from them.

Mem. pt. 3.  
p. 207.

1. The two letters to Mr. Robertson of the 8th of August, and lady Jane's bill of exchange on Mess. Coutts and Co. are in process; and are direct and lasting contradictions to the bold assertion, that *all the letters were dated Rheims*. The pursuers make a very faint effort to *invalidate this proof*. The memorialist treats it "as a case of necessity." "The letter to Mr. Robertson," as he states the case, "must bear the same date as the bill of exchange, which was inclosed in it: and the bill of exchange must be dated from Paris, where the people of Rheims believed lady Jane to be at this time (for by the bye she was really at Dammartin), otherwise sir John very well knew, that Mess. Panniers the Paris bankers would scruple to accept it." But surely this reasoning involves in it a very great contradiction. Sir John is accused of a design to conceal lady Jane's journey to Paris; and at the same time it is avowed, that he knew at this very time, that all such concealment was impracticable. This draught is for a quarter's payment of the duke of Douglas's allowance; and sir John very well knew, that it must some time or other pass into the hands of the duke or his auditor: the same may be observed of the receipt delivered to the Taffins.

Serv. 7. A.  
P.P. 298. D.

Mr. Colvil's letter is not in process; but he has twice sworn at the distance almost of four years, that it was dated from Paris. He appeals to Mr. Archibald Stuart, and to the other persons, to whom he showed this letter; and if this gentleman's integrity and candour were not sufficient motives to engage the court and all the world to believe him, we might add another reason. Sir John and lady Jane were but a few weeks at Paris. They were many months at Aix and Rheims, and Mr. Colvil himself had conducted them towards Holland; this witness had *no cause of knowledge*, that they were ever at Paris, except the letter to which he refers, or some early but yet undiscovered information, which the pursuers would be unwilling to admit. It should be added, that Mr. Colvil destroyed this letter only two or three years before his first examination, thinking it of no importance.

Mem. pt. 3.  
p. 209.

The memorialist goes on to argue against Mr. Colvil from Mrs. Hewit's letter of August the 12th. He would have done better to have argued from Mr. Archibald Stuart's deposition. But let us hear



hear Mrs. Hewit. She says to Isabel Walker, “ You may tell  
 “ Mr. Mackenzie or any body you please of your lady’s being  
 “ brought to-bed now, for her ladyship is writ it to her brother last  
 “ week, which was the soonest she was able; so since he is ac-  
 “ quainted with it, there is no need for keeping it a secret.” The  
 letter to the duke was not written till the 7th of August: and  
 if that was the first letter, as by Mrs. Hewit’s account it should  
 seem to be, which the family wrote after the delivery, Mr. Col-  
 vil could have received no letter so early as we are assured he did,  
 both by Mr. Colvil himself and Mr. Archibald Stuart; besides,  
 the letter to lord Crawford of July the 22d is in process. Lady  
 Jane might perhaps have given such a childish order: but it was  
 never observed. Both sir John and Mrs. Hewit wrote freely to  
 their friends long before the 7th of August; and Isabel Walker  
 communicated the news of the delivery to all her friends at Rheims,  
 as soon as she knew it.

Serv. 36. D.

D. P. 53. F.  
— 158. 1.  
— 364. B.

The same objection is made to Mr. Douglas of Edrington. He  
 has lost his letter; and the same answer will serve, That he has  
 twice sworn, it was dated from Paris.

The foundation of all, that the pursuers object to these gentle-  
 men, is a mere *petitio principii*. They suppose Mrs. Hewit to  
 be an accomplice with sir John Stewart; and therefore if sir John  
 dated his letters false, it is not likely that Mrs. Hewit should date  
 her letters truly. But a plain man, who argued from the evi-  
 dence, would come to another conclusion. It is proved, that Mrs.  
 Hewit dated her letters from Paris, while sir John dated his letters  
 from Rheims; therefore they were not accomplices in any thing.

General Macelligot’s letters are not in process, but he has  
 sworn that the last was dated from Paris; and that he addressed  
 his answer to Paris: both letters were certainly dated from the  
 same place. He was just married to lady Wigton; and it is pro-  
 bable, her ladyship’s letter and the general’s were sent under one  
 cover, and of consequence bore the same date and place. Lady  
 Wigton’s answer is found, and bears date the 29th of July; from  
 whence it should seem, that these two letters were sent off with  
 the rest on the 22d, and lady Wigton’s will make a tenth letter  
 dated from Paris. The pursuers memorialist owns this might be  
 the case, because the letter invited lady Wigton to Rheims to be  
 god-mother to the child; and there she could not fail to know,  
 that lady Jane was delivered in Paris.

The second letter to Mrs. Hepburn is without the name of the  
 place; but the post-mark is Dammarin. The first letter is not

in process ; but there is proof that it bore date from Paris. Mr. and Mrs. Hepburn were privy to the chevalier Douglas's advice, when sir John passed through Liege in May ; and Mrs. Hepburn distinguishes, what she knew at the time it happened, from what she has been told since. She says, " The deponent knows, that  
 Serv. 10. c. " Effy Caw and Tibby Walker remained at Rheims, when lady  
 " Jane went to Paris to be delivered ; and has been told by sir  
 " John, &c. that the reason of their remaining at Rheims was  
 " the want of money." Mr. Gordon of Cowbardie was then  
 D. P. 376. B. living in Mr. Hepburn's family at Liege, " and was told by  
 " them, that they had received a letter from Paris : he first heard,  
 " that lady Jane was gone to Paris ; afterwards, that she was  
 " delivered of twins." And lady Jane in a letter to Mrs. Hepburn says, " Your friend Mr. Stewart is gone the day before yester-  
 Serv. 32. " terday to see little Sholto. Mr. Stewart took the opportunity  
 " of going along with baron Macelligot, who was obliged to go  
 " to Paris about some affairs. After these proofs it is in vain to pretend, that Mr. and Mrs. Hepburn were ignorant of their motions. Indeed it is certain, that sir John and lady Jane concealed none of their intentions from this family ; and it is almost impossible to prove any guilt in sir John or lady Jane, without supposing that Mrs. Hepburn is an accomplice.

The letter to Mr. Florentin is a mere trifle ; so that the omission of the place can in no sense be turned to the disadvantage of sir John Stewart, who was very incorrect in many instances. But what can be said for the false dates from Rheims ? Perhaps they cannot all be accounted for from the same principle. For instance ; the date of lady Jane's letter to the duke arises purely from an inadvertency. She was at an obscure town, the very name of which was perhaps unknown at Douglas-castle ; and she was setting out in a few days for Rheims. Nothing was more natural than to put the name of her usual residence to this letter. Her ladyship ought indeed to have been consistent, and have dated her letter to the duke from the same place as the bill of exchange, and she would have been consistent if she had been then executing a plot. This letter deceived nobody ; for Mr. Colvil had already given a copy of Mrs. Hewit's letter to Mr. Archibald Stuart to be shewn to the duke : so that his grace very well knew, that lady Jane was delivered at Paris ; and all that he could imagine from this letter was only, that she was returned to Rheims a few days sooner than she really was.

The date of the letter to Mr. Stewart, and of that to Mr. Mac-ewen, which seems to have gone with it, may be accounted for from the same inadvertency. Sir John invites his son to come  
 over,



over, and live with him at Rheims; and if he had accepted the invitation, he must have known what all the people at Rheims knew, that lady Jane went to Paris to be delivered. This is precisely the same reasoning, which the pursuers memorialist owns to be just in the case of lady Wigton. By the bye this letter to sir John's son, which invites them to come and live with them, and which was written when sir John is pretended to have been only looking out for children, affords the strongest presumption of the reality of the pregnancy and delivery; for it is impossible he would have invited his son to come over immediately, if he had been carrying on any fraud, as Mr. Stewart might have arrived before the scheme was executed, and time enough to have prevented it.

Thus no meaning puzzles more than sense: all the mistakes are probably owing to nothing but inattention. The strongest charge is against the letters to lord Crawford; and yet they are plainly as free from artifice as the rest. Sir John Stewart wrote to baron Macelligot from Paris; his receipt was delivered to the Taffins to be forwarded to Mr. Khar. If lord Crawford had been at Aix when sir John Stewart supposed he was, he would have been daily in the company of baron Macelligot, and learnt from him that lady Jane was at Paris. If therefore there was any thing to be concealed from lord Crawford for a moment, of which there is no shadow in proof, it could be nothing dishonourable; because all the motions of the family were frankly communicated to persons of rank and honour, who were intimate with his lordship.

The pursuers are very just in saying, that such letters as are dated from Rheims, and do not specify the place of the delivery, would naturally lead any one to think, that the delivery had happened in the place, from whence the letter is dated. This would certainly have been the case, if no direct accounts had been given, which contradicted them. That there were such accounts, has been seen already in the depositions of Mr. Colvil and Mr. Douglas, and appears farther from the following observations.

1st. Sir John's letters from Rheims came directed to him at Godefroi's; but Mad. Pelletier speaks of other letters, which came to him addressed to be left at her coffee-house. She speaks in particular of several letters which came after his return to Rheims. From whence could these letters come, unless there were friends, to whom sir John had sent his address on his first arrival at Paris? P. P. 458. c.

2d. The journey to Paris, and subsequent delivery there, were known to all the Scotch at Rheims and other places; general Maclean, Mr. Macnamara, Mr. Mackenzie, lady Wigton, Mr. and Mrs. Hepburn, Mr. Gordon, had all of them correspondents

in Scotland, and doubtless contributed very much to render the delivery very public amongst their friends.

3d. Not one of these witnesses, who have been brought to depose to the reports and conversations, which prevailed in Scotland on this subject, ever heard or suspected that the delivery was in any other place than Paris. Mr. Colvil has deposed, that he shewed Mrs. Hewit's letter to many persons ; and there is not the least doubt, but that her letter contained an early and faithful account of the whole transaction.

*Conclusion.*

To conclude this part of our journal : it appears that Mr. Douglas was held to be habite and repute the son of lady Jane by all the persons, who saw them during this period ; and that sir John Stewart and lady Jane discovered on all occasions the utmost tenderness and parental affection for him : that Mrs. Hewit's testimony is regular and consistent in all the circumstances, which respect the child or his nurses. Some incidents have been brought into proof by the French witnesses, which contradict her account of the conduct and health of lady Jane : but these incidents are found equally contradictory to the full and uninterrupted information, which those French witnesses themselves have at all times given of her ladyship's health and conduct. And though it is scarce possible entirely to clear them up, yet we know, that the word St. Germain was borrowed from sir John Stewart's declaration ; and that the party to Versailles was inadvertently applied to lady Jane, when she was thought to have staid at the hotel D'Anjou till the middle of August. It is acknowledged, that lady Jane did submit to a more strict rule of œconomy than she wished should be known to her Scotch acquaintance, and that sir John avoided the Jacobites ; but they never entertained, either in thought, word, or action, so fruitless a design, as that of concealing from their friends or from the world the place, time, or manner of the delivery.

As to the Tournelle process, far be it from any one who reverences good laws and public justice, to reflect on that venerable court. The defender has in his turn been obliged to that court for what he has discovered of the depositions of Mr. Godefroi and Mad. Blainville ; and he has more to hope and to expect, if ever those depositions shall be published. Those witnesses indeed depose under some prepossession ; but this prepossession owes its rise to a different cause. The terrors, with which the stories of the enlevements have inspired them, are very visible throughout, and are greatly injurious to truth and to the defender.



## DEFENDER'S PROOF. PART V.

### INCIDENTS FROM THE RETURN TO RHEIMS TILL THE ARRIVAL OF THE FAMILY IN ENGLAND.

#### S E C T. I.

*Observations on the persons of Lady Jane and the Child at Rheims.*

THE family returned to Rheims the 16th of August 1748, D.P. 57. E. and took up their quarters at Mad. Mayette's. They had been absent just six weeks and three days.

We must begin by enquiring, what the people of Rheims and others say of the persons of lady Jane and the child.

Mad. Mayette was not at home, when her guests arrived; and several persons, who appear as witnesses in the process, were not yet come to Rheims. However, as nothing of consequence intervened between the 16th of August and the 20th of September, when they were all assembled; the whole number will follow in order in this place, care being taken to point out the precise time, at which each witness may be supposed to have made his observation.

Isabel Walker is undoubtedly the first witness, both in point of time and importance, as it was her business to observe the person of lady Jane. She says, "that she observed the greatest difference in the world in lady Jane when she returned to Rheims, by what she was when she went to Paris; for that when she went to Paris she was big with child, and when she returned, she was much extenuated and thin in her shape; and that when lady Jane returned to Rheims, she had a pale and weakly look." This witness saw lady Jane a week before her delivery, and six weeks and three days after it. — 367. F.

General Maclean saw lady Jane a day or two after her arrival; — 346. B. he says, "As lady Jane always wore a loose gown and a large hoop, he took no notice of any alteration further than he thinks he remembers she looked paler in the face."

Mr. Mackenzie and Mr. Macnamara were at Rheims on August the 16th, and saw lady Jane. They have expressed their full belief, that Archibald is her son; but have not taken any particular notice of her person.—Mr. Mackenzie having given a pointed — 54. A.  
P.P. 6. D. account

D. P. 53. E. account of the appearance of her pregnancy, when he comes to mention her after her return, says only, “she then looked very well.”

Mr. Florent Andrieux lived at Rheims, and certainly saw lady Jane and the child a few days after their arrival; but as he was only nineteen in the year 1748, common sense tells us, that little accuracy is to be expected from him in such a case as this:  
 — 65. B. he says only, that lady Jane had “\* une figure intéressante &  
 — 66. B. “noble, & le teint plus pâle que coloré; qu’elle avoit l’air de-  
 — 64. F. “licate & foible.” He says he saw the child “† très souvent,  
 “& qu’il a toujours vû Monf. & Mad. Stewart marquer beaucoup  
 “de tendresse pour l’enfant.” He agrees with all the rest of the Rheims witnesses; “‡ qu’il n’a entendu personne dans le tems  
 “antérieur au procès dire qu’on a soupçonné ces deux enfans de  
 “n’être pas de Monf. & Mad. Stewart.” He does not make the least attempt to describe the person of the child, whom he saw *very often*; and yet the inattention and forgetfulness of this young man is pleaded very strongly by the pursuers against the pregnancy and convalescence of lady Jane; and we are required to believe on his negative testimony, that Mrs. Hewit and Isabel Walker are perjured, merely because they remember more of their own proper business, than young Mr. Andrieux, who had no manner of concern with it.

P. P. 163. E. Mad. Sautrez saw lady Jane and the child a few days after their  
 — 165. H. arrival. She does not describe either lady Jane or the child. She attended only to her business as a mantua-maker; and as, ac-  
 — 164. C. cording to her account, she had not observed lady Jane’s pregnancy, she was surprised to find that she had brought a child with her at her return from Paris, and cried out—“|| Il faut que  
 — 164. D. “je sois bien bête de ne m’être pas apperçue de tout, que Mad. Stewart étoit si prête d’accoucher.” She further deposes,  
 — 165. G. “§ qu’en voyant l’enfant, & apprenant qu’il étoit l’enfant de Mad. Stewart, il ne vint pas dans l’esprit de la deposante, que cet enfant ne fut pas en effet de Mad. Stewart.”

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\* “Had a noble and interesting figure, her complexion rather pale than coloured, and she had a delicate and weak appearance.”

† “Very often, and that he always saw Mr. and Mad. Stewart shew a great deal of tenderness for the child.”

‡ “That he never heard any one at any time prior to the present process say, that it was suspected that these two children were not Mr. and Mad. Stewart’s.”

|| “I must be very stupid not to have observed at all, that Mad. Stewart was so near the time of her delivery.”

§ “That on seeing the child, and hearing that it was Mad. Stewart’s, it did not enter into her mind, that the child was not in fact Mad. Stewart’s.”



Mr. Maillefer, of whom much has been said already, and Mad. Maillefer became acquainted with lady Jane (according to Mad. Maillefer's reckoning) "quelques jours après la retour à Rheims;" and she dates the return at the end of August, or beginning of September. It is certain, this family were intimately connected with lady Jane before the baptism of the child on September the 22d; but the commencement of their intimacy cannot be fixed to a certain day.—Mad. Maillefer says, that the child " \* en arrivant lui parut avoir six semaines ou deux mois; qu'il étoit brun, qu'il avoit des grands yeux noirs, & les sourcils bruns." This brown child with black eyes could never be Mignon's child: and if we could depend as much on this lady's accuracy, as we may upon her honour, it should seem, that she did not receive lady Jane's first visit till towards the end of the month, nor return it till some time later, when she first saw the child. As neither Mr. Maillefer nor his lady had seen lady Jane before her journey to Paris, they made no remark on her person at her return. They both assure us, they never had any doubt, nor ever heard of any person at Rheims who had any doubt, of these children being the children of sir John Stewart and lady Jane.

D. P. 147. B.

— 147. F.

— 151. C.

— 148. D.

We could wish to have done with Mad. Maillefer's account; but justice requires that we should say a word or two on the extraordinary use, which was made of her name and Mr. Maillefer's in France.

In the *Memoire à Consulter* du mois de Novembre 1762 may be read as follows: "† Mad. Maillefer dit, qu'elle considérait l'enfant assez attentivement; qu'elle étoit persuadée qu'il avoit six à sept mois.—Mad. Maillefer se souvient, qu'il y avoit une différence très remarquable entre les deux enfans, &c. que ces différences si remarquables lui avoit données dans le tems quelques soupçons d'un enfant supposé."

D. P. 1027.

All this is as contradictory to common sense as it is to truth.—The two children were not at Rheims together till November 1749, when Mad. Maillefer's suspicions are said to begin. The author of this story did not recollect, that lady Jane was absent from Rheims little more than six weeks; and that, if the eldest child had appeared six months old, when he was first brought

\* "On coming to Rheims appeared to her about six weeks or two months old; that he was of a brown colour, and had large black eyes and brown eye-brows."

† "Mad. Maillefer says, that she considered the child attentively; and that she was persuaded, that he was six or seven months old. — Mad. Maillefer remembers, that there was a remarkable difference betwixt the two children, and that this difference so remarkable gave her at the time some suspicions of a supposititious child."



thither, Mad. Maillefer and all the people of Rheims would not have suspected, but known with certainty, in August 1748, that he was not the son of lady Jane Douglas.

This probably is one of the last quotations, which will be made from the papers produced by order of the House of Lords.—The writer of these sheets has sometimes argued from them as true, and sometimes been obliged to reject them as entirely false; and therefore thinks it may not be improper to explain, upon what general principles he has formed his judgment.

1st. The English journal of Mr. Andrew Stuart is certainly of credit, particularly as it was written entirely for his own private use.

2d. The papers drawn up for the use of the French lawyers, before the plaintes were offered to the parliament of Paris, are of very doubtful and suspicious authority. The agents for the pursuers in December 1762 knew nothing of the conduct of lady Jane Douglas, but what they had learnt from the depositions in the service; but they knew a complaint would no more be admitted by the Tournelle, than a bill would be found by an English grand-jury, unless some facts were alledged, which would render the commission of the crime at least probable. Hence the artful manner, in which Michel's book was huddled into the Tournelle without the knowledge of its owner. Hence the bad use, which was made at that time of the names of Mad. Aubrey—of the Michels—of nurse Favre—and Mad. Maillefer; who have all lived to disavow upon oath the most important of those points, which had been presented in their names to the French counsel, when the plaintes and the Monitoire were drawn up.

3d. Most of the French papers in date subsequent to the plaintes and Monitoire were intended for the private service of the French agents; and there seems no reason to mistrust them. We must except however from this list Mr. D'Anjou's account of the conference on the 9th of August 1763; which is plainly finished for a particular and public use.

To return to our proper subject.

D. P. 57. F.

Mad. Mayette, at whose house the family now lodged, did not return till three weeks, or a month after the arrival of her guests. We have seen already, that she had once met lady Jane in the rue des Morts, and observed that she was with child from her difficulty in walking, and said, “ \* *Qu'il étoit tems qu'elle partît, car elle avoit beaucoup de peine à marcher.*”

— 58. D.

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\* “ That it was time for her to go, for she had great difficulty in walking.”

When.



When Mad. Mayette returned home, she found lady Jane in her house, and observed, “ † que Mad. Stewart étoit toujours D.P. 58. E.  
 “ pâle, & qu’il lui parut, que cette dame étoit fatiguée, & plus  
 “ tirée du visage que lorsque de la rencontre dans la rue des  
 “ Morts; qu’à l’égard du corps, Mad. Stewart lui parut beau-  
 “ coup moins grosse, & même extrêmement mince.” With re-  
 spect to the child she adds, “ ‡ Qu’il étoit blanc, & avoit les  
 “ cheveux tirant sur le brun, & les yeux bruns; & quand la de- — 58. F.  
 “ posante vit cet enfant pour la première fois, il lui parut avoir — 59. A.  
 “ un mois ou six semaines.”

The pursuers memorialist makes a pretty strong reflection on the credit of this witness, which, as far as it is supported by fact, has been answered already. What she here says in relation to lady Jane, is distinct and clear. Her description of the child’s person is quite singular. It is of little use to the defender, and of none to the pursuers.

On the 20th of September there arrived baron Macelligot and P. P. 1070. B.  
 lady Wigton, attended by Miss Primrose and Mrs. Greig, who are all witnesses in this cause. They all remained at Aix-la-Chapelle, when lady Jane left it on the 21st of May; so that they took leave of her, when she was in the eighth month of her pregnancy, and returned to see her about ten weeks and a half after her delivery.

Baron Macelligot says, “ That before and about the time of the D. P. 350. C.  
 “ christening he did indeed see a most visible difference in lady  
 “ Jane’s shape and looks; that she was prodigiously lean, much  
 “ paler than usual, and very weak; in a word, that he saw that  
 “ difference, which is always observable in a woman, that has  
 “ been lately brought to-bed.”

The pursuers memorialist is very pleasant upon the poor baron Mem. pt. 2.  
 for observing the effects of a late delivery more than ten weeks P. 219.  
 after it had happened. But this gentleman did not consider, that baron Macelligot’s words are plainly referable, not to the positive effects of the delivery, but to the visible difference between lady Jane’s *shape and looks* at that period, and the former shape and

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† “ That Mad. Stewart was always pale; and that it appeared to her that the lady was  
 “ fatigued, and thinner in the face than when she met her in the street des Morts; and with  
 “ respect to her body, Mad. Stewart appeared to her a great deal thinner, and even ex-  
 “ tremely thin.”

‡ “ That he was white, and had brownish hair and brown eyes; and when she saw the  
 “ child first, he appeared about a month or six weeks old.”



looks which he had observed at Aix. At whatever period subsequent to the 10th of July 1748 the baron had observed lady Jane, he would have found her appearance visibly different, from what it was on the 21st of May 1748.

D.P. 350.D. After mentioning lady Jane's fondness for the child, he adds, "That he never doubted, as sure as God is in heaven, but that it was lady Jane's child; and that whilst he staid at Rheims, he never heard any one doubt in the least of its being lady Jane's child."

Serv. 26. E. Lady Wigton was examined only by commission on the service, and said nothing relative to the persons of lady Jane or the child at this period.

D.P. 358. E. Miss Primrose says, that when she saw lady Jane upon her arrival at Rheims, her person was so much slenderer than when she saw her at Aix, and there was such a difference in her whole appearance, that the deponent scarce knew her to be the same woman.

Serv. 16. C. Mrs. Greig, who had said in her first oath, "that nobody but one blind could have doubted lady Jane's being with child," adds in her deposition in this cause, "that at Rheims she had the appearance the deponent expected after hearing, that she was brought to-bed of two children."

— 364. D. Walter lord Blantyre was also present at this time. He had never seen lady Jane during her pregnancy; and as his lordship died before this suit began, we must have recourse to the deposition of lady Dowager Blantyre, his mother, who says, "That she has heard him say, that he never heard any body doubt, that these children were hers, till he came to Britain; that he himself seemed convinced, that these were her children, and often declared he had no doubt of it."

Mem. pt. 2. P. 222. These fourteen persons are all, who are known to have had the opportunity of making accurate observations of lady Jane and the child, when they came first to Rheims, or a little later. The pursuers tell us, that these witnesses prove only, that lady Jane had a pale, delicate, and sickly look, and that *some* of the persons, who then saw her with a young child whom she acknowledged to be hers, naturally connected this appearance with the notion of her having been lately delivered. This is by no means the whole of the proof. *All* these witnesses do for themselves, and for all other persons whom they knew in France, make that connection; and some of them do a great deal more. They had seen



seen lady Jane in an advanced stage of her pregnancy, and they point out in strong terms the vast difference in her shape and in her countenance; such a difference as could be owing to nothing but an intermediate delivery, and which excludes the possibility of a fraud. The pursuers memorialist is so sensible of this, that, without the least warrant from common sense or humanity, he treats all the witnesses of this class as perjured persons.

## S E C T. II.

*Of the baptism of Archibald September the 22d.*

THE baptism of Archibald was delayed till the arrival of lady D. P. 1070. Wigton and baron Macelligot. It was now publicly celebrated in the parish church of St. Jaques on the 22d of September 1748. — 310. F.

The omission of the place, the day, and month of the birth in the register of the baptism, is called in the premiere plainte, “\* Une infraction le plus manifeste des ordonnances du royaume.” In the Monitoire it is stiled a fraudulent precaution.—In the Confiscation of Facts it is said, “That the act of baptism is defective and irregular in several of its most *essential* points.”—Who could believe after this, that the act of baptism is regular in all its points? Yet such it appears not only from the deposition of Mr. Savar, chaplain of St. James’s parish, but from all the entries made in the register of that parish in the years 1748 and 1749. — 1020. E. — 1012. F. No. 42. — 157. E.

A circumstance in this christening, relative to Sholto the other child, is brought into proof by accident from the private letters of two persons present. Lord Blantyre in a letter to lady Jane Douglas, dated Paris the 24th of April 1749, writes thus: “Adieu, my dear madam, I send a number of compliments to Mrs. Hewit, to Mr. Stewart—and to my two godsons.” And baron Macelligot writes thus to Mr. Florentin only four days after the christening: “† Leurs deux garçons se portent bien; on nous a donné une fête splendide à l’occasion de la batême, qui est déferé jusqu’à notre arrivé; j’ai eu le plaisir de voir des chrétiens, étant parein.” The pursuers memorialist lets lord Blantyre

\* “A most manifest breach of the laws of the country.”

† “Their two sons are very well; they gave us a splendid entertainment at the christening, which was delayed till our arrival; I was godfather, and had the pleasure of seeing them made christians.”

Mem. pt. 2.  
p. 220.

tyre pass; but he would willingly persuade us, that the baron was weak enough to imagine both the children were at Rheims, and that he himself had been present at the baptism of both as god-father, when in reality there was but one child there. Perhaps we may find better sense in these expressions. Sholto had been baptised privately without god-fathers. There was a seeming defect in his baptism, according to the rules of the church. All that my lord and the baron mean, is with much good-nature to declare, that they were ready to supply this defect; that they stood intentionally in the same relation to the absent child, as they had professed to stand in to the child that was present. The concurrence of these two persons in one singular mode of expression at the distance of many months, when they had been long separated from each other, shews clearly, that the family did not confine themselves to generals when they spoke of the youngest child, but that all the little incidents of his birth were minutely talked over at the christening, from whence lord Blantyre and the baron both learnt to adopt the same humane and benevolent language. It is impossible they should have learnt it by any other means.

P.P. 142. D.

The whole witnesses at Rheims mention their being told immediately on sir John and lady Jane's return from Paris, that they had left their youngest child in the neighbourhood of that town. Nurse Mangin in particular swears, that she often heard Monf. and Mad. Stewart, and the chambermaids, speak of this child, which was at nurse near Paris; and that she was even employed to make cloaths for this child; and that it consists with her knowledge, that Mr. Stewart went several times to see him, and carried cloaths to him two or three times.

Before we quit this month of September, it is necessary to observe, that during the course of it lady Jane fell again with child. The commencement of this pregnancy is not exactly ascertained by the proof. More will be said of it, when we come to treat of the miscarriage.

### S E C T. III.

*Of the argument from habite and repute.*

THE child, who was here baptised, is indisputably the same person as the present defender: so that, if the conduct of his parents has been vindicated thus far from all suspicion of fraud, one would imagine the necessary proof were now at an end, and Mr. Douglas is from this time assuredly habite and repute the child, who was baptized at Rheims as son of sir John Stewart.

But



But it seems, the great lawyers are somewhat divided in opinion, whether his state of habite and repute from his birth to this time is sufficiently established by the evidence in process.

It is far from the design of these papers to engage in any dispute on a point of law. The writer however cannot help taking notice, that the ground of habite and repute in France is greatly undervalued by some persons.

It has been said (Almon page 326 (a), Anderson page 459) "that the habite and repute at Paris is only that of the family of Mad. Michel." If by this be meant, that none but the family of Michel are found to give evidence to the habite and repute at that early period, the assertion is not true. If it be further meant, that the proof of habite and repute is confined by the artful conduct of sir John and lady Jane within the limits of that family, the fact is certainly false. Nurse Favre, her husband, and brother-in-law, are not of the family of Michel; Mad. Daux and Mad. Pelletier are not of that family; and surely a carrier and a mistress of a coffee-house are some of the most likely persons in the world to publish what they hear; and these persons were never directed to be secret. It is morally impossible to suppose, that Mr. Andrieux, and all the other gentlemen of Rheims, should neglect to congratulate sir John Stewart on the birth of the children; and whatever letters of that kind were sent, passed through the hands of Mr. Godefroi, who must have known a great many particulars about sir John Stewart more than he at present is pleased to recollect. The bad nurse from St. Germain's staid a whole night at Michel's; and when she was first engaged, was intended to have been carried to Rheims, otherwise they would not have bought the cloaths for her mentioned by Mad. Favre. If this woman had gone to Rheims, or been found, we had been at no loss to trace out the drunken nurse from whom she received the child, and in all probability Mad. Le Brun had been discovered; nay, if either Marie Maliffet, Michel's maid, or Mad. Breval, had been now living, it is probable they would have told us many circumstances, which they had learnt in their evenings conversation with the bad nurse. Nurse Favre had several conferences with Mad. Daux on the subject of the child, and was some days at Dammartin with nurse Mangin who went to Rheims; so that many a door was open to carry the whole Paris history to Rheims, and from thence to Scotland; and it is certain that sir John Stewart never put out his hand to shut it. He lived freely and artlessly with the people about him; and if we have not so

(a) Lord Justice Clerk.

particular accounts of every transaction as we could wish, the defect must be imputed to the length of time, which had elapsed before the enquiry was begun ; and in part to the easy and natural conduct of the family, which afforded nothing very striking, or worthy particular observation. It was added, “ Who of their family was ever to question the truth of the accounts given by a stranger lady of her having had a child.”—Nobody surely ; but every one of that family was interested to question, whether the lady, who came to the house, was the mother of that child which she brought with her. Many wise remarks have been made on the nurse with no milk, and she has been found by some to be more like the nurse of a Mignon, than of a Douglas. If this was so, can any one believe, that she would not have appeared in the same light to the family of Michel ? These Michels are honest people, and keep a reputable house : if there had been the least shadow of misconduct in sir John or lady Jane, the slender profit, which accrued to the Michels, would never have tempted them to discredit their house. But they not only received these suspicious guests, but took a good deal of pains to accommodate them well, and procure a woman of credit to nurse the child ; and they now appear to give the most ample testimony of their firm belief that all was right.

It is further urged, “ after returning to Rheims the same argument holds good ; they came there amongst strangers, who had no interest whatever in the matter.” It is scarce to be conceived, that any one should venture to call these persons strangers to lady Jane, unless every one is a stranger, except the very next of kin. Six persons of fashion from Scotland met them at Rheims, besides servants, all of whom had correspondents in their own country ; among these, four (excluding servants) were witnesses to lady Jane’s pregnancy ; and lord Blantyre was a relation.—Mr. Maillefer, as much a stranger as he was, shewed a particular desire to be acquainted with the circumstances and conduct of his new acquaintance, particularly of what past at Paris, and no doubt received all the information he desired ; an information, which totally overthrows the whole credit of the pursuers alibi proof, and leaves Mr. Godefroi nothing but the wretched alternative of a perjured witness, or an accomplice in the pretended fraud.

In short, if we reflect one moment on the manner, in which most of our merchants, our clergy, our soldiers, and sailors marry and settle in the world, we shall generally find them remote from the residence of their infancy, and from their next of kin at the time of the birth of their first-born, surrounded with new acquaintance,



tances much less attached to their families or interested in their concerns, than lord Blantyre, lady Wigton, and the other Scotch at Rheims were to those of lady Jane Douglas; much less disposed to enquire, or doubt, than any of those persons who are *invidiously* called *strangers*.

Mr. Douglas has been always habite and repute the son of lady Jane Douglas with all and every of the persons, who had the nearest and best means of knowing the truth of his birth; with all those, who saw him or his mother in the first stages of his infancy; and with all others, who resided in France at the time of his birth, and conversed with those persons who had seen lady Jane with child.

But the pursuers, it seems, have brought several respectable persons from Scotland, and amongst the rest the noble guardians of the defender, to say, that they heard some people in Scotland say, that these children were not lady Jane's. Neither these witnesses themselves, nor the persons from whom they received their accounts, knew one syllable of the truth, or ever troubled themselves to learn any circumstances relating to the delivery, but what had been transmitted by sir John Stewart and lady Jane, or Mrs. Hewit. Not one living witness has owned, that he himself entertained those suspicions; and the greater part of the witnesses in process have declared, they believed the account of the birth, notwithstanding the reports to the contrary. Of the two reasons popularly assigned for these suspicions, one was false, and the other an argument founded on the grossest ignorance; I mean the article in the foreign Gazette; and the impossibility said to arise from lady Jane's advanced age. With respect to the private belief of the witnesses themselves, Mr. Colvil calls the reports a *mere farce*, and says, he never paid any regard to them.—Mr. Macmillan says, people spoke as they affected.—Mr. Haldane says, he never entertained any suspicion.—Mrs. Frances Cockburn says, that she has no doubt, but they are lady Jane's children.—Miss Primrose and the chevalier Douglas are pointed witnesses to the pregnancy.—The countess of Glasgow says, it was the opinion of her father's family, that they were lady Jane's.—To these we must undoubtedly add his grace the duke of Queensberry, lord Cathcart, and the family of the late lady Shaw, whose noble and disinterested protection of the defender sufficiently assures us, that they never entertained any doubt of the truth of his birth.

This is a distinct state of the Scotch evidence, upon which the pursuers found their negative proposition, that in the year 1748

P. P. 85. K.

— 573. H. &amp; C.

— 298. K.

— 301. I.

— 302. H.

— 303. H.

— 398.

the defender was not generally habite and repute the son of lady Jane Douglas in Scotland. It amounts to thus much, That some one in Scotland was wicked enough to invent a wilful fallhood, and others credulous enough to believe it. To cite the report in Scotland, is only to bring one untruth to the support of another; and indeed it is matter of surprize, that no effort has been made to prove that the defender was not habite and repute in France; for after it was given out that the entry in Michel's book was of sir John's hand-writing, and that the pursuers had discovered the father and mother of the children, the general belief at Paris seems for some time to have been, that he was not the son of lady Jane.

It was necessary to say thus much on the general argument founded on those reports, considered as early reports. The history of the several tricks, which were successively invented to impose on the duke of Douglas, will be found in their chronological order.

The pursuers call upon us to consider these points in another point of view. They say, that they came early to the ears of the family; and that sir John and lady Jane never took any pains effectually to ascertain the reality of the birth, when it was in their power, though they knew suspicions were raised against it. This is stated as a presumptive argument against the defender.

How far we are to think sir John and lady Jane guilty of wilful neglect in this point, will depend much on the manner, and time, and circumstances, in which these reports were severally conveyed to them. The writer of these papers has felt the particular expediency of a chronological method, when he has attempted to investigate the motives of any person's conduct; and as the reports were severally brought to the family at different periods, and as the family actually did something from time to time in consequence of such information, this subject must be deferred to its proper place.

#### S E C T. IV.

*Of Sir John Stewart's return to Paris in October 1748.*

<sup>1</sup>Serv. 32. D.

ON the 9th of October 1748 sir John Stewart returned to Paris to see Sholto. He was accompanied in this jaunt by the baron Macelligot and Mr. John Hay. As these gentlemen could be no strangers to sir John's design of going to Paris, it is probable they know something relative to the younger child.

Mr.



Mr. John Hay is not a witness in process. It is not known, how long he staid in Paris at this time; only it appears, that he was acquainted with the other Scotch who were there; and particularly, that he dined in this very month with the chevalier Johnston, in company with the baron and sir John Stewart. Mr. Hay certainly knew all the circumstances of lady Jane's family, P. P. 53. K. which were publickly known at Rheims; and we have seen, that what was publickly known at Rheims in September 1748, was at least all and every part of what has since been deposed in this process; and yet it seems the chevalier Johnston, who conversed with this Mr. Hay, and some other Scotch gentlemen then at Paris remained still ignorant, that the delivery was at Paris, or that Sholto was at nurse in the neighbourhood. Whether the present ignorance of these gentlemen proceeds from want of information, or want of memory, is of little consequence to Mr. Douglas.—This instance serves to shew, that the little incidents in lady Jane's family were not thought of consequence in 1748, and vindicates the character of sir John Stewart from all suspicion of intentional concealment.

Baron Macelligot never went to see Sholto. His account is as D. P. 354. B. follows: “ That, as much as he can recollect, sir John's reason  
 “ for going to Paris was to see his other child: that he believes  
 “ sir John and he did lodge together in the same hotel: that sir  
 “ John when in Paris did speak to the deponent of his other son  
 “ there, and said, to the best of his the deponent's remembrance,  
 “ that he was on the mending hand: that he does not recollect  
 “ to have been informed by sir John *where the child was*, or in  
 “ whose care; that, to the best of his memory, the reason of his  
 “ never going to see the child, was his the deponent's indif-  
 “ position.”

It is plain, that sir John Stewart acted throughout with intire confidence in baron Macelligot, and nothing but the baron's illness prevented him from seeing the child. Can we believe, that sir John would have acted in this manner, if he had had no child to produce? The pursuers tell us, that if enquiry had been made, sir John might have told the people at Rheims and in Scotland, that the sickly child was dead: but what could he have said to baron Macelligot, if an occasional intermission of his disorder had enabled him to offer to visit the child? If he had told him the child was dead, provision must have been made for the funeral; the death would have been published amongst all the British at Paris by the baron and Mr. Hay; the Scotch would have wished to ho-

nour the remains of a child of the house of Douglas, and rendered a mock interment altogether impracticable.

Serv. 32. E.

Lady Jane tells Mrs. Hepburn in her letter of October 1748, that Sholto was still mighty weak and tender, though rather somewhat revived, and better within these few weeks: which is the same account with the baron's.—Sir John Stewart returned to Rheims before the end of the month, but baron Macelligot was left at Paris.

## S E C T. V.

### *Of Lord Blantyre's journey to Paris.*

D.P. 996. E.

SOON after fir John Stewart's return to Rheims, viz. on the 11th of November 1748, he wrote to his son, now fir John Stewart, in the following terms: " But my dear Jack, now that  
" you are disengaged, what should hinder your coming here to  
" me, where you have hearty welcome to lady Jane, who wants  
" much to make you acquainted with *your brothers*, and renew  
" your acquaintance with me. If you have money, a little cannot be better employed; if you have little of that necessary  
" evil, frugality should determine your gratifying me in it, as  
" you cannot possibly live so well and so cheap as with us, where  
" it shall stand you nothing to fare as we do; so, my dear, come."

This, as well as the former pressing invitation, which he had given this young gentleman to go over and live with them, was a most incredible conduct on the part of fir John Stewart, if it be true, as the pursuers alledge, that, when he pressed him first to go over, fir John was only on the look-out where he could steal children; and that now he had only one child, to whom he could introduce him in the character of a brother. If this pressing invitation had been accepted, and fir John certainly had all the reason in the world to think it would, this young man must inevitably have discovered the whole fraud: but upon the supposition that the birth was real, and both the children then in fir John's possession, the conduct was natural and proper.

If the late lord Blantyre had been alive, he probably would have been a witness of consequence on the subject of Sholto. This young lord was a relation of the family of Douglas, and took a particular interest in lady Jane's concerns. He was at Paris in October

P. P. 363. H.

— 364. C.

1748, and, for what appears to the contrary, continued there till May



May 1749, when he returned home. There are several letters from him in process, and others in which he is mentioned; but the collection is imperfect, and there is no direct proof that he ever saw the child, or that he did not. However, a passage in a letter from lord Mark Kerr to lord Crawford, dated the 3d of June 1749, deserves to be quoted. Lord Mark writes thus: "My  
 " lord, I had her letter (lady Jane's) to my lord Blantyre, which  
 " your lordship was pleased to send me, which I returned to his  
 " lordship with my desire, that he would be so good as be at the  
 " trouble to write to the duke, to let his grace know *he had seen*  
 " *the two boys.*" Upon what ground did lord Mark Kerr make this request to lord Blantyre in consequence of lady Jane's letter, which was then before him, unless it had either appeared to his lordship from that letter, or that lord Blantyre had told him, that he had seen the two children?

## S E C T. VI.

*Of Lady Jane's expectations from Scotland.*

THE first circumstance worthy our attention after sir John's return to Rheims was the news from Scotland. Mr. Colvil, the chief evidence on this head, calls his news a *mere farce*. But as every thing is to be taken seriously in this process, this report must be considered.

The marriage of lady Jane, and the birth of her two sons on the 10th of July 1748, had been notified in form to the duke of Douglas, and to most of her friends in Scotland. It was reasonable to expect, that the duke would take some part in an event so interesting to his family; and there is no doubt, but sir John and lady Jane were prepared for it. The defender alledges, that his parents acted a natural and easy part at this time, in consequence of a real delivery. The pursuers say, they acted falsely and artificially, in order to conceal a pretended one. To judge rightly of their conduct, one should carefully consider, what those consequences were, which were most likely to follow from the communication of this news at Douglas castle.

Either the duke would suspect the reality of the birth, or he would not. If he did not, it is not easy to conceive, that the news of a natural event so advantageous to his family, could give him any disgust. But it happened, that his grace had never yet declared himself on the subject of the marriage. The birth of the children would probably, it was thought, oblige him to speak  
 out;

out; and on this point there was very great reason to doubt, what part he would be pleased to take. That his grace should merely on account of this incident in his family at once forget all his prejudices; be reconciled to his sister, with whom he had been many years at variance; receive into favour the husband whom she had chosen, to whom he had very great and just exceptions; and admit Mrs. Hewit, the supposed adviser of all the conduct which had displeased him, into a share of his bounty; is more than ever entered into the head of the warmest advocate of this distressed part of the family. There is not one syllable of the proof which leans towards such an expectation; but many passages in their private letters, which shew, that the hopes of lady Jane and all her friends were much humbler.

Mem. pt. 5.  
p. 16.

The pursuers memorialist has collected a great many passages from the proof, to shew the great distress of the family at this time. The distress was real; why then should we suspect, they would burthen themselves with children? But it appears also from some passages quoted in the same place, that they endeavoured to be reconciled to the duke at this time. To be sure they did; and so they had done at all other times; witness my lord Crawford's letter to the duke in April 1748, in which are these remarkable expressions: "I'm hopeful (says my lord) my representations will  
" not only meet with forgiveness, but with also their wished-for  
" success, in reconciling your grace to an event all the well-wishers  
" of your grace's family may have the greatest reason to rejoice  
" at, &c." (he means the marriage and pregnancy.) His lordship goes on, "I can assure your grace, she does great honour to  
" her family wherever she appears, and is respected and beloved  
" by all that have the honour of her acquaintance. She cer-  
" tainly merits all the affectionate marks of an only brother to  
" an only sister." This warm sollicitation was attended with no alteration in the duke of Douglas. The birth of the children obliged the friends of the family to renew it, but in terms much more moderate, which betray a great diffidence of success.

The pursuers still urge, that the birth of the children is actually alledged as a motive for the *duke's* reconciliation. This is also in part true; and as far as it is true, it is highly reasonable. The birth of children was an addition of expence, and an increase of distress; it is therefore very justly made use of as a motive for such a moderate augmentation, as might enable the parents to maintain these children. They did hope they should not be the poorer by the increase of their family, and we shall see plainly from



from their own words, that this was all they expected; or more properly indeed all they asked.

That his grace would have made a proper allowance for the maintenance and education of these children, was what all the world must have expected. Whatever might have induced the duke to reduce his sister to the situation she was in, these children were no parties in the offence: they were his nephews, heirs of the house of Douglas: their parents were unable to maintain and educate them properly; and this duty devolved upon their uncle.

But a frugal supply, proportionate only to the increase of the family, was no acquisition of wealth to any one person in it; and to say the truth, it was more than probable at this moment from the duke's known resentment against sir John Stewart, that his grace would have taken the children out of their parents hands, and brought them up in his own way; and then sir John and lady Jane had certainly been left as they were before the birth. At any rate, they had no profit to expect, no pleasure, unless the children were their own. They did use some measures to procure a necessary addition to their income; and all their friends, and all the world thought their conduct reasonable and just.

Lady Jane in her first letter to her brother expresses herself in P. P. \*63.\*<sup>22</sup> this modest manner: "I think it my incumbent duty as well as  
" natural inclination to acquaint you with the birth of the chil-  
" dren, which I am hopeful may be a means to replace me in  
" some measure in the share of your favour I was once happy  
" in, and never willingly forfeited."

Lady Jane could not well say less than this, when she addressed herself to the duke; she asks to be replaced in favour, but hopes for it only *in some measure*.

The exact measure of her expectations at this time may be learnt with great precision from what she writes to her other friends, to whom she could speak with greater freedom.

When the duke withdrew her annuity the following year, she wrote to Mr. Archibald Stuart; to whom she expresses herself thus: "To take away the small annuity, when I was fondly hop- — 1066. 2.  
" ing for an increase to that small allowance, now my family  
" expence is necessarily augmented;" and in another letter to lord — 1066. 1.  
Morton she says, "which in common justice and humanity he  
" should have encreased, in consideration of my additional expence  
" by

“ by the increase of a family ;” and in one of the letters to lord Milton, dated the 21st of November 1748, she writes, “ Not to let the duke of Douglas be so far wanting to himself, as to fail in the incumbent duty of taking some care of his sister and nephews, who want but the necessaries of life with decency in some measure proportioned to such relations.”

Such were the humble expectations of lady Jane from this extraordinary event. They are such as are fully justifiable to the common reason of all mankind. Lord Crawford, Lord Mark Kerr, and Lord Blantyre entered warmly into all her desires. Sir John Stewart could not expect more than lady Jane; and as for Mrs. Hewit, this was the very best thing that could happen to her; for had lady Jane been reconciled to her brother, and introduced her husband into some share of his favour, it is morally certain that Mrs. Hewit must have been the victim of such reconciliation.

But let us suppose, that the duke had been touched with some slight degree of returning affection for his sister, the first advance towards a reconciliation, which common civility would have dictated, would have been the sending over some person on his grace's part to examine into the wants of the family, to see the children, and be sure that proper care was taken of them. And how was lady Jane prepared for the reception of such a messenger? The pursuers tell us, she had given out that she was the mother of two children, when she really had but one in her possession. If there had been any fraud, it certainly lay open to instant detection, whenever the duke should be pleased to interest himself in the concerns of the family; it mattered not, whether he interposed with real affection, or reserve and distant kindness.

But the pursuers tell us, that the children are supposititious; and that their birth was suspected in Scotland from the very first. They have not indeed been so kind as to point out any one reasonable cause of suspicion; yet, as guilt is always mistrustful, we may be sure, that if sir John and lady Jane had committed the crime with which they are charged, they would have taken some precautions to prevent a discovery. Let us try their conduct on this issue.

If the duke of Douglas had any reasonable ground to suspect the birth, the only part which he could be expected to have taken, would have been to have sent over some person of confidence, not attached to lady Jane, to have examined critically the proof of the delivery. This is a conduct so very obvious to common



mon sense and common honesty, that the writer of these papers cannot think it credible, that any one faithful servant or friend of the family would have advised him to do otherwise. If Mr. Archibald Stuart had done what he promised to Mr. Colvil, the duke would have been very early informed, that lady Jane was delivered at Paris.—He would have learnt from her letter of the 7th of August, that she was gone back to Rheims; on this supposition, the most prudent method of making enquiry into the suspected fact would have been by beginning at Paris without the knowledge of the family at Rheims. But what provision had lady Jane made against such an enquiry? None in the least. Yet the pursuers say, there was no child at Paris, and admit, that sir John Stewart had unnecessarily thrust himself in the way, and gone to Paris under pretence of seeing this child, at the very time he had all the reason in the world to expect an answer from Douglas-castle, which would have obliged him to produce both the children.

One cannot help thinking, that had the duke of Douglas been left to the workings of his own mind on this extraordinary occasion, he would have interposed in one or other of these methods; and we must judge of the propriety of lady Jane's conduct, not from what the duke actually did, but from what in the common way must have been expected from him: and it appears, that the behaviour of sir John and lady Jane was artless and unaffected; they notified the birth to his grace with propriety and respect, and they waited for his answer with that apparent unconcern, which is never consistent with a consciousness of guilt.

On the contrary, the duke's conduct is not only inconsistent with common prudence, but with those strong lines which mark out his grace's character. He was naturally a man of strong passions; he had very high notions of honour, and the sensibility which remained on his mind from his reflection on one unguarded action in his life, leaves us little room to suspect he would wilfully have committed another. The birth of his two nephews was an event, which ought naturally to have interested him one way or other, especially when such respectable friends, as lord Mark Kerr and lord Crawford, undertook to rouse up all that was Douglas in him; yet from all that appears in proof, he remained stupidly insensible to the interest of his encreasing family. He never answered lady Jane's letter; he never made any satisfactory excuse to the lords, who engaged in her behalf, but continued to keep them in a distant suspense, till an accident of a different

nature happened the next year, which made an irreparable breach between him and his sister.

## S E C T. VII.

*Of the arrival of news from Scotland.*

**T**HUS much being premised on the probable consequences, which were to be expected from the notification of the birth in Scotland, and on the preparations sir John and lady Jane had made for those consequences, it is time to relate the account which actually came from thence, and to examine their conduct when they received it.

Serv. 7. A.  
P.P. 298. D.

— 298 L.

— 299. A.

Mr. Walter Colvil is the only witness to this account. We may remember, he has deposed more than once, that he had received a letter informing him of lady Jane's delivery of two sons, dated from Paris.—He goes on, “ That he has shewn or  
“ read the said letter to several persons, who at the time enquired  
“ for lady Jane. That some time before he received the letter,  
“ he was often sent for by Mr. Archibald Stuart, and enquired  
“ at by him how lady Jane and sir John were? Where they  
“ were? and what they were doing abroad? But that after re-  
“ ceiving that letter Mr. Stuart never sent for him the deponent;  
“ that lady Jane did look upon Mr. Stuart as a friend; that he  
“ thinks, it was about three or four weeks after he received the  
“ letter acquainting him of the birth of the children, that he  
“ first heard it reported that the children were not lady Jane's;  
“ that he believed these reports a *mere farce*, and that he never  
“ paid any regard to them; and that the only reason he ever  
“ heard mentioned for these reports was lady Jane's age; that in  
“ the first letter he wrote after hearing the reports concerning  
“ the children not being lady Jane's, he acquainted Mrs. Hewit  
“ thereof, and had a return from Mrs. Hewit to that letter, and  
“ that that letter was wrote within a very short time, and as he  
“ thinks, within four or five weeks after he first heard the be-  
“ forementioned reports; and remembers, that Mrs. Hewit said  
“ in her answer, that the birth was too well known, or vouched,  
“ to be disbelieved; but did not enter into any particulars con-  
“ cerning the house where the birth happened, or the persons  
“ who were present; nor had the deponent desired her in his let-  
“ ter to do so, &c.”

This is the earliest account of the suspicions, which were raised in Scotland against the birth. Mr. Colvil mentioned them



to Mrs. Hewit; and it has been thought, that Mrs. Hewit ought to have thundered them in the ears of sir John and lady Jane; and that they ought to have raised all Paris in defence of their children; but there are several reasons, which lead us to think, that Mrs. Hewit acted with tolerable propriety.

Mrs. Hewit could not think these suspicions of any consequence, and she had no occasion to offend lady Jane with the repetition of a scandal, which she herself knew to be false, and which no one asserted as true.

Mrs. Hewit could not find out by Mr. Colvil's letter, that these reports were mentioned at Douglas-castle; she had indeed information from other hands, sufficient to make her believe they were not. Not a word past on this subject from lord Crawford, Mr. Hamilton the minister of Douglas, or lord Mark Kerr; nay D.P. 1003. D. when lord Mark Kerr was tired with these reports in April 1749, he writes to lady Jane with great delicacy, and only tells her, "I heartily wish you had staid in Great Britain, or had returned, Serv. 50. A." "as soon as you found any prospect of producing, which I heartily wish you joy of." Mr. Archibald Stuart was the reputed friend of lady Jane and sir John Stewart: he writes a kind letter to sir John at the same time, but says not a word of the suspicions. "Allow me (says he) to wish you all imaginable joy, both of the honour done you by my lady Jane, and of the increase of your family: I very early heard of it, but not from yourself: I believe, from our first acquaintance my conduct has been pretty uniform for your interest." It is true this gentleman had withdrawn himself from Mr. Colvil, merely because he communicated the news of the birth: but this conduct did not strike Mr. Colvil at first; he thought that Mr. Stuart was lady Jane's friend, and so did Mrs. Hewit. There does not therefore seem to have been any reason at this time, why Mrs. Hewit should have offended lady Jane with a communication of these reports. — 1007. G.

2dly. Mr. Colvil has sworn, "that he believed these reports a mere farce, and that he never paid any regard to them." He has not (nor was it to be expected) told us the very words of his letter; but as he never paid any regard to these reports himself, it is reasonable to suppose Mrs. Hewit would take his letter as he meant it, and treat them as a *mere farce*, and pay no regard to them. Jokes on women, who are pregnant at an advanced age, are no uncommon things; every idle fellow can say, "Miracles are not ceased;" and it happens that Mr. Colvil is not the only person, who informs us, that these reports took their

rife from a piece of low humour, which has fince appeared to be malicious. A letter of lord Mark Kerr's is in procefs dated the 3d of June (certainly 1749) addreffed, not to lady Jane, but to lord Crawford, from whom he would conceal nothing. After telling lord Crawford, that he wifhed lord Blantyre would write to the duke of Douglas, he adds, " which I hope will take off " some fufpicions he has, *calling them in a jocular way Pretenders.*" Lord Mark Kerr was the laft man in the world, who would have amused himfelf in this illiberal manner; he was juftly offended at it. We may reft on the authority of his lordfhip and Mr. Colvil, that thefe reports were publickly received as mere jeux d'efprit fo late as the 7th of June 1749.

But what thefe two perfons of unquestionable integrity have faid, will furnifh us with a very ferious reflection. We fee in what manner the peace of the family was firft difturbed. While Mr. Archibald Stuart was writing to fir John Stewart " that his " conduct had been pretty uniformly for his intereft," a poifon was artfully conveyed to the ears of the duke of Douglas in the femblance of wit; and he was taught to think he cut a royal joke, when he called thefe young relations *his Pretenders*. It is no wonder, that a report frequently inculcated fhould at laft be thought to have *something in it*: yet the duke had fcarce been the dupe of this artifice, if a frefh caufe of quarrel, independent both of the marriage and the birth, had not arofe the next year; from which time, and not before, thefe reports became ferious and deferved attention.

3dly. It appears plainly, that Mrs. Hewit returned a proper and fenfible anfwer to her friend. Mr. Colvil received the notification of the birth about the end of old July. Three or four weeks later he wrote to Mrs. Hewit; fo that fhe probably answered his letter in October following. He told her of thefe reports, which arofe from lady Jane's advanced age, which rendered her delivery in the language of fome people incredible. He never asked any pofitive proof of the birth, neither who were prefent, nor in what houfe it happened. Mrs. Hewit replied, that the birth was too well known, or vouched, to be difbelieved. Now what were the proper vouchers to a fact, which was believed in its own nature incredible? Not certainly a detail of French witneffes, which Mr. Colvil could fcarce have read, and which Mrs. Hewit could not have fpelt; but a reference to a fact of the fame kind, which he might fee with his own eyes; for it fhould be remembered, that when Mrs. Hewit promifed Mr. Colvil



vil vouchers which could not be disbelieved, lady Jane was again with child. This is the circumstance, to which she alludes with some archness in answer to Mr. Colvil's reports, as what would satisfy every one, that lady Jane's delivery was not incredible. A more convincing proof could not be given; and indeed it seems to have satisfied the pursuers themselves so far, that we hear very little at least of this boasted impossibility, which was once the great bulwark of their reasoning.

## S E C T. VIII.

*Of Lady Jane's Miscarriage.*

THE next fact, which is brought into proof, is the miscarriage. This happened at Rheims publickly in the open face of day. Mrs. Hewit, Isabel Walker, and nurse Mangin swear, that they all saw it with their eyes. Miss Primrose and Mrs. Greig swear, that they were first told, that lady Jane was again with child, and sometime thereafter they heard of her having miscarried. Mad. Maillefer was told of it by sir John Stewart, soon after it happened; and visited lady Jane before her recovery; so that it is attested by every person, who had an opportunity of knowing any thing of it, and was habite and repute a miscarriage amongst all the friends and acquaintance of lady Jane.

The time of this miscarriage may be settled by a letter from Mrs. Hewit to Mrs. Hepburn of Keith, dated the 21st of December 1748, in which she says, "To add to my trouble lady Jane is Serv. 33. B.  
" bien ill these three weeks, tho' now blist be God she is pretty  
" well, but very weak; you must know she was in as good a  
" way as you and I cold a wisht the matter of ten weeks." So that the misfortune happened about the 1st of December; and Isabel Walker's reckoning of three or four months after the return — 21. B.  
to Rheims agrees very well with this letter.

Yet the pursuers memorialist endeavours to shake the credit of this fact by observing, that Mrs. Hewit had assigned a later period for this miscarriage in her evidence on the service. She there seems — 13. A.  
to make it near four months after the christening; but then she had dated the christening a whole month too early, which will advance her date of the miscarriage a whole month, and leave not a month of mistake. The pursuers are welcome to make the most of it. The writer of these papers can give no other answer to these shrewd criticisms, than by remarking one consequence. If inaccuracies in dates be once admitted to overthrow the reality of a fact, there



P. P. 277. B.  
 — 281. F.  
 — 290. D.  
 — 277. B.  
 D. P. 272. F.  
 P. P. 276. F.  
 — 284. E.  
 — 290. K.

there is not a single fact proved in all this process, except the birth of Mr. Douglas. Nobody doubts, that Sanry's child was taken from him; yet the enlevement of that child is dated by the parole evidence in three different years, in three different months, and at three different hours of the day; and the time can be settled by nothing but the publick register.

Serv. 34. C.  
 — 21. B.

— 34. C.

— 17. A.

— 28. B.

Another objection of the pursuers is founded on a circumstance equally trifling. It seems the miscarriage was the consequence of a very slight accident, which happened to lady Jane on a visit to lady Wigton. Mrs. Hewit says, it was in coming home from lady Wigton's. Isabel Walker says, it was in going thither. Neither the one or the other were present, and the accident was so trifling, that lady Jane never mentioned it till the next day, when she miscarried. If it were necessary to ascertain the date of so insignificant a circumstance, one might, I think, rest satisfied with the testimony of Mrs. Greig, lady Wigton's woman, who says, that lady Jane complained of the strain, when she came in to lady Wigton's: that she gave her a cordial, and sent her home in a chair. The learned memorialist would have us reject Mrs. Greig's oath, because lady Wigton appears to have known nothing of the illness till the next day: this might very consistently be the case, as nothing is more common, than for people of fashion, who are accidentally out of order at a friend's house, to apply rather to a servant for relief, than to trouble the master or mistress with their complaint.

D. P. 368. B.

A third objection is formed from the different descriptions, which are given of the fœtus by Isabel Walker and nurse Mangin. Isabel Walker says, that the conception was not formed into any shape or body, so as to be distinguishable. She thinks that Mrs. Hewit might have seen it; but does not remember, whether any of the other persons in the house saw it or not, for there was no formed conception of a child to be seen; but that, if she was talking to any woman, she would explain the matter more fully.

— 142. C.

Nurse Mangin says, she met Effy Caw on the stairs with a chamber-pot, and having learnt what was in it, \* “ la depo-  
 “ fante voulant la voir par curiosité, leva le fetus, et reconnut que  
 “ c'étoit un enfant male de la longueur de sept à huit pouces.”

There is no difficulty in supposing, that nurse Mangin might get a peep at the pot without the knowledge of Isabel Walker:

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\* “ The deponent being desirous to see it, out of curiosity lifted up the fœtus, and observed that it was a male child of seven or eight inches.”



but it has been said, that they ought both to have described the same thing. Isabel Walker saw nothing but an unformed mass; yet it does not follow from thence, that nothing else was to be seen by an observer, who had more leisure, curiosity, and attention. Nurse Mangin says, she examined the fœtus, and may certainly be believed, provided her account is consistent with the nature of the thing she attempts to describe.—The pursuers have examined Dr. Young and Mr. Smith of Edinburgh on a point of science, the usual size of an embryo. — Mr. Smith says, that a fœtus of three months may be between an inch and a half, and three inches long; but not above three inches. Dr. Young is asked a very indeterminate question; “the size of a common fœtus between two and three months.” To which he answers, It is about an inch in length. Isabel Walker says, she cannot be positive as to the precise time of the pregnancy at the miscarriage, but that it was above two months, and under three. Mrs. Hewit in her letter calls it ten weeks; and in her deposition, near three months. So that upon the whole, our inquiry should be confined to the appearance of a fœtus between ten weeks and three months. P. P. 491. c. — 493. d.

As the answers of these learned gentlemen differ very much, and seem too indeterminate to be of any use in the present case, the writer of these papers wished to be better informed, and therefore turned to the only books he had by him on the subject, Mr. Cowper's Anatomy, and Mr. Buffon's Natural History.—These accurate painters of the works of nature differ widely from the Scotch witnesses; which of these gentlemen is in the right, the writer of these papers will not pretend to determine. The reader has seen the answers of Dr. Young and Mr. Smith; he will now, it is hoped, be candid enough to read what the other gentlemen have alledged.

In the 100th table of Mr. Cowper's Anatomy we may see the skeleton of a fœtus of about three months age, which is four English inches and one half in length.

Mr. Buffon is very minute and particular; he writes thus:  
 “ \* A deux mois le fœtus a plus de deux pouces de longueur; à trois  
 “ mois le fœtus a plus de trois pouces, & pèse environs trois  
 “ onces.—Avant le fin du troisième mois la tête est courbée en  
 “ avant, le menton posé sur la poitrine, les genoux sont relevé,  
 “ les

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\* “ At two months the fœtus is more than two inches long; at three months it is more  
 “ than three inches, and weighs about three ounces — before the end of the third month,  
 “ the head is bent forward, the chin rests upon the breast, the knees are raised, the legs  
 “ folded



“ les jambes repliées en arriere, souvent elles sont croisées ; &  
 “ la pointe du pied est tournée en haut & appliquée contre la  
 “ cuisse, de sort que les deux talons sont fort pres l'un de l'autre.  
 “ —Quelque fois les genoux s'elevent si haut, qu'ils touchent  
 “ presque aux joues ; les jambes sont pliées sous les cuisses, & la  
 “ plante du pied est toujours en arriere ; les bras sont abaissés  
 “ & repliés sur la poitrine ; l'une des mains, souvent toutes les  
 “ deux touchent le visage ; quelques fois elles sont fermées ;  
 “ quelques fois aussi les bras sont pendans à coté du corps.”—  
 Hist. Naturel. des Animaux, p. 384 & 385, tom. 2d.

P. P. 493. E.

We have here a very graphical description of a fœtus at the very point of time we want to see it. And as to the length, which nurse Mangin gives to what she saw, it is natural to imagine, that the membrane will stretch to a very considerable length before it breaks, when it is held up in the manner related by nurse Mangin. Dr. Young is asked, whether a fœtus betwixt two and three months, after the membranes are opened but still connected with them, if the whole is lifted up on the end of a stick, may not appear to be about seven or eight inches long ; a question, which it is hoped the doctor understood (though it is not English), for he answers—he does not know how long it may be, when lifted up on the end of a stick. So that nurse Mangin's account remains very credible ; and the only reflection to be made on the evidence is, that Isabel Walker, during the hurry of her attendance on lady Jane, did not examine the fœtus as she might have done.

Such are the objections made by the pursuers to this fact. It remains proved by the oaths of all the persons, who had access to know the truth, and by the general belief of the people of Rheims.

To finish this subject of miscarriages at once, we will here take notice of an objection formed from the depositions of this nurse Mangin, of lady Rutledge, and of Mrs. Maitland. The nurse mentions a second miscarriage. and lady Rutledge speaks of one in the year 1749, and Mrs. Maitland of a third at London. These frequent miscarriages, say the pursuers, are incredible, therefore we are to believe none of them.

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“ folded back again, often cross each other, and the toes are turned upwards, and placed  
 “ in such a manner against the thigh, that the two heels are very near each other ; some-  
 “ times the knees rise so high, that they almost touch the cheeks, the legs are turned un-  
 “ der the thighs, and the sole of the foot is always behind—the arms hang down, and are  
 “ crossed upon the breast ; one of the hands, and often both, touch the face ; sometimes  
 “ they are shut ; sometimes also the arms hang at the side of the body.”

But



But surely these several facts, though of the same kind, are as distinct in point of proof as any other facts in the process, and must each of them stand or fall according to the degree of evidence, which is brought to support them. The miscarriage, which is said to have happened about the 1st of December 1748, has all the evidence in its favour, of which the nature of the thing is capable, the testimony of all the attendants who saw it, and the belief of the town. Each of these other miscarriages is separately denied by those attendants, and was never heard of in the town, or by any other person, except the single witness, who is pleased to bring it into process.

Isabel Walker says expressly, that lady Jane never had any other miscarriage, while she was abroad, so far as the deponent knows; and thinks, if there had been any, she must have known it by her being constantly about her. D.P. 368. B.

Nurse Mangin deposes, “ \* Qu’environs deux mois & demi — 142. C.  
 “ après cette premiere fausse couche, elle apprit par les femmes  
 “ de chambre de Mad. Stewart, qu’elle avoit fait une seconde  
 “ fausse couche.” She knows no circumstances of the miscarriage, and probably took her account from some occasional mention of the former miscarriage, which she mistook for a recent fact.

Lady Rutledge says, she was told of the miscarriage she mentions by Mrs. Hewit. This lady came to the neighbourhood of Rheims only in June 1749, and departed in September following, and consequently whatever she observed, or heard mentioned, must be within three summer months of 1749. She says, she never heard of any other miscarriage, than that of which she — 153. D.  
 speaks, and indeed it is not probable that she should; for what — 157. A.  
 was told her, could scarce be any thing, but the story of the former miscarriage introduced into conversation in lady Jane’s sick chamber. Mad. Rutledge is known to be a woman of credit, but she has unfortunately made so many mistakes throughout her whole account, that the writer of these papers does not think it expedient to make any use of her deposition.

It is remarkable, that these two persons, who said they were told of these miscarriages, bear ocular testimony to lady Jane’s capacity of having children. — 142. C.  
— 157. E.

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\* “ That about two months, or two months and an half, after the first miscarriage, she learned from the chambermaids, that Mad. Stewart had had another miscarriage.”

D.P. 386. E.

Mrs. Maitland tells us the exact story of the miscarriage of December 1748, only by substituting London for Rheims, and lady Hume for lady Wigton. Such variations are to be expected, when a story is told at second-hand, without any fault of the witnesses.

## S E C T. IX.

*Of the incidents in the Winter 1748—49.*

**F**EW incidents passed at Rheims after the miscarriage, which deserve our attention. <sup>a</sup> Sir John spent his time at the coffee-house, and was often in straits for money. <sup>b</sup> Lady Jane was universally esteemed by all her acquaintance, <sup>c</sup> and was the reputed mother of the two boys. <sup>d</sup> She was thought to be in constant correspondence with the man-midwife, who had the care of Sholto, and shewed on all occasions a singular fondness for the defender. <sup>e</sup> She was known by all about her to be capable of bearing children, as Mad. Mayette says, “ Parceque portant des fleurs, elle “ pouvoit porter du fruit.”

The writer of these papers may possibly by inadvertency have omitted several witnesses in his references to the proof of these facts: he had also omitted Mrs. Hewit and Isabel Walker by design, because the reader need scarce be told, that they have borne a direct and pointed testimony to them all, both on the service, and since on their several examinations in process. Many presumptive arguments might be here formed in favour of Mr. Douglas, which may be safely left to the attention and judgment of every dispassionate reader.

P.P.\*442.\*

In spring 1749 it appears, that sir John went again to Paris to see Sholto, where he staid several days; but at what precise time this journey was made, is not ascertained by the proof.

## S E C T. X.

*Of Lady Wigton's journey to Paris.*

Serv. 28. B.

P.P. 344. K.

**B**ARON Macelligot, lady Wigton, and their attendants, left Rheims, and went to Paris in spring 1749.

It is a great disadvantage to the defender, that lady Wigton lived only to the time of the service, and was then so ill as to be examined only on commission. Her ladyship says very little about Sholto, for no one at that time ever dreamt of charging lady Jane with



with having talked so much of a child, which was not in her possession: however, in answer to some question or other, lady Wigton has just been led to say, “ that she believes she may have heard, Serv. 27. F.  
“ but does not remember the name of the surgeon, with whom  
“ Sholto was at nurse.”

Miss Primrose deposes, “ that during the time lady Wigton D. P. 361. E.  
“ and the deponent were at Paris, the deponent did not see the  
“ child Sholto, nor the person to whose care she had been told  
“ Sholto was committed; and deposes, that neither she, nor lady  
“ Wigton to her knowledge had any address or direction, by  
“ which they might find out the house where Sholto was; but  
“ considering lady Jane's intimacy with lady Wigton, she be-  
“ lieves, that lady Wigton might have had such an address,  
“ though she never told the deponent of it; and for what the de-  
“ ponent knows, Lady Wigton might have seen Sholto, as she  
“ went out sometimes without the deponent knowing where she  
“ went.”

Mrs. Greig says, that she heard lady Wigton, when at Rheims, P. P. 343. I.  
say to lady Jane Douglas, “ that she was going to Paris, and as  
“ soon as she was able she would go and see Sholto; and lady  
“ Jane begged her, that she would write her a particular account  
“ how he was, and how he was taken care of; that she does  
“ not remember to have heard of the address directing to where  
“ Sholto was, nor did the deponent ever ask it, but did not  
“ make any doubt, but lady Wigton had an address, as without  
“ that she could not promise to see him.”

If these depositions do not prove the existence of Sholto at this period, we see clearly the point at which the proof fails, because he was thought to be very safe where he was, and no one troubled himself much about him. It is impossible to conceive, that Sir John would have gone once from Dammartin to Paris, and twice from Rheims on purpose to see this child; that he should have carried cloaths to him on these occasions, mentioned his state of health to baron Macelligot; and that lady Jane would have sent lady Wigton on the errand mentioned by Mrs. Greig, unless there had been such a child as Sholto then at nurse in the neighbourhood of Paris.

These quotations will serve also incidentally to refute those reflections, which are cast on the characters of these two witnesses; for Miss Primrose and Mrs. Greig had certainly room to have told the court one uniform story about what past in lady Wigton's family,

mily, if they had been disposed to have given any unjust advantage to Mr. Douglas.

## S E C T. XI.

*Of the loss of Lady Jane's pension in July 1749.*

P.P.\*427.\*B. **T**O return to the family at Rheims, Archibald was weaned the 22d April 1749. Sir John and lady Jane were living quietly at Rheims in the manner above described, when an unforeseen accident interrupted their repose, and reduced them at once to a state of poverty.

— 532. c. Lady Jane had contracted several debts in Scotland. It was well known that the duke her brother allowed her 300 l. per annum ; and this was thought by her creditors to have been irrevocably settled upon her : his grace himself seems not to have been well apprised of the extent of his power over it, till he had consulted Mr. Archibald Stuart. On the 17th of July 1748 he had been affronted by Margaret Kerr, who had arrested lady Jane's money in his grace's hands. In July this year the same insult was offered him by Mr. Peter Haldane. His temper then left him ; — 532. c. and on the same day, on which he received the arrestment, he hastily discharged Mr. Archibald Stuart from remitting any more money to lady Jane.

— 532. c. This incident seems at first view to have little reference to the dispute about the birth of Mr. Douglas ; but the pursuers have brought it into process. The duke's letter to Mr. Stuart is printed, and shews plainly the single motive of this resentment : though this letter was written in a moment of passion ; though it is addressed to a person, whom he entirely trusted ; to one who is supposed to have had frequent conferences with his grace on the subject of lady Jane and her children ; yet there is not the least intimation in it that the duke resented any part of her conduct, much less that he suspected she had fostered children which were not her's, a topic which one would imagine his grace could have hardly overlooked when he wrote on such a subject, to such a friend, at such a time ; and we may reasonably presume from this total omission of it, that all the talk about pretenders at Douglass-castle was to this 10th of July 1749, what Lord Mark Kerr says it was, in a *jocular way*.

It was not possible for lady Jane to foresee this stroke, or to prevent it if she had. It might easily be made use of to inflame  
the



the duke's wrath against his sister; and it has unfortunately occasioned some expressions of resentment to fall from lady Jane against her brother. She was however, upon the whole, as discreet as most persons would have been in her situation; and those who blame her, would do well first to stand up, and vindicate his grace upon the principle he himself has assigned for his conduct in his letter to Mr. Stuart.

## S E C T. XII.

*Of Sir John's letter to La Marre, September the 11th 1749.*

THE order of time requires us next to observe the following entry in lady Jane's memorandum-book; it is in her own hand. "Mr. Stewart wrote to Mr. Waters the 11th of September, and to Mons. La Marre the same day." And from the dates of entries prior to this it appears to be written in 1749. The pursuers memorialist would have us believe, that this entry is an interpolation; but as Mr. Waters's answer is in process, and the whole sentence is apparently written with the same ink, nothing can be more futile than such an objection.

P.P. 392. D.

Mem. pt. 4.

p. 111.

P. P. 384. E.

## S E C T. XIII.

*Of Lord Morton's generosity in October 1749.*

THE loss of lady Jane's pension threw her and sir John Stewart into the greatest distress. They were not only without money, but were in debt at Mad. Mayette's.—Lady Jane's first application was to her uncle lord Mark Kerr; but this was attended with no success: she then wrote to lord Morton, who pitied her wants, and instantly relieved them. His lordship lent her 350 l. She received the knowledge of this kindness in October 1749, and acknowledged it with that sensibility, which arises from a good heart; the money was paid on the 2d of November 1749.

D. P. 60. B.

— 981. C.

P.P. 1067. C.

## S E C T. XIV.

*Of the journey to fetch Sholto.*

IT was high time for the family to think of quitting Rheims, where they could no longer subsist on the footing they had hitherto done. It was time for them also to return to Britain, and see if the personal presence of lady Jane could move the heart of her unrelenting brother. They had waited only for money to pay their debts. They had only to fetch their child from Paris, and be gone for ever.

So much has been already said on the subject of the journey to fetch Sholto, that little remains to be observed in this place. We are sure it was performed between the 2d of November and the 29th. We are sure also that no credit is due to Abbé O'Neil, and three other witnesses produced by the pursuers. Indeed had any four persons on the defender's side concurred positively in support of a fact, which was afterwards discovered to be notoriously false, there is little doubt, but the pursuers would have cried out perjury and a plot. Let us leave these people and their employers to reflect on their own conduct, and proceed to settle, as was promised in an early part of these papers, the exact time of the journey to Paris.

P. P. 244. D. Sir John Stewart and the family uniformly connect this journey  
 — 258. H. with the receipt of lord Morton's money. Mrs. Hewit says, they  
 had received that money just before they set out. She very minutely specifies the time of their absence from Rheims. They were  
 — 257. D. four days on the road in each journey, and lay four nights in  
 — 259. C. Paris. They were therefore, according to this computation, ab-  
 — 257. H. sent ten nights and eleven days. It is pretty clear from the proof,  
 — 258. F. that they set out on the 3d, and returned on the 13th of Nov.

All the circumstances of the family concur to prove, that they had staid for nothing but this supply of money: and as lady Jane had received notice in October that the credit was on the road, there was no necessity for losing a moment's time in preparations for their journey, after it was actually received on the 2d of Nov.

No French witness of credit has attempted to determine the  
 D. P. 148. C. exact time of their absence. Mad. Maillefer says only, " que ce  
 " voyage n'a pas été long: mais qu'elle ne sait pas combien de  
 — 59. E. " jours il a duré." Mad. Mayette, where they lodged, never  
 missed them; or at least does not now recollect that they were absent at all. These circumstances however lead us strongly to think, that their time of absence was not longer than Mrs. Hewit has deposed.

These ladies are asked, how long the family staid after their re-  
 D. P. 59. F. turn, before they set off for England? Mad Mayette says, " qu'  
 " apres l'arrivé du second enfant a Rheims, Mr. & Mad. Stewart  
 " n'y sont restés que peu de tems, peut-être sept ou huit jours, ne  
 " pouvant assurer a quelques jours près." Mad. Maillefer de-  
 D. P. 148. D. poses, " qu' elle a eu peu d'occasions de voir cet enfant, parceque  
 " Monf. & Madame Stewart sont partis peu de tems apres son ar-  
 " rivée, peut-être un mois, peut-être six semaines ne pouvant se  
 " rappeler au juste le tems." It is impossible to require that  
 these witnesses should determine such an uninteresting point with  
 precision,



precision, and they do not attempt it. Yet it is but justice to the character of Mad. Maillefer, to pay due attention to what she says. If this lady has erred, it is in making the time of absence shorter, and that of the second residence longer, than they really were: but we cannot conceive, that she could mistake any time less than a fortnight for a month or six weeks. As far, therefore, as the French evidence reaches, it tends to confirm what the family have said, that they set out in the very beginning of November, just as they received lord Moreton's money, and of course returned on the 13th.

But it is said, the family have betrayed themselves, and declared that their second residence was very short. Isabel Walker in particular is become the great favourite of the pursuers memorialist on this occasion: it is for this reason that the examination of her account is reserved for the conclusion of our present enquiry.

She says, "that it was some time in the beginning of November that sir John, &c. set out for Paris: she is not positive as to the time they were away, but thinks it did not exceed the time they could perform the journey and return; that the family remained at Rheims but three or four days, (as she best remembers, but cannot be positive) when they took their journey for England: that she cannot remember whether she computed by the new or old style, though the style used in France was the new style: that the family did not leave Rheims in a hurry; that they paid their reckoning, and put up their baggage deliberately." In this same passage she computes the time of the journey to England, as will be seen in the next section: and she says she arrived in the week before Christmas. P. P. 51. A.

It is now known that they set out from Rheims on Nov. 29. It is plain therefore that there is more time between the beginning of November and the final departure for England, than Isabel Walker seems to allow to the Paris journey and subsequent stay at Rheims. The pursuers memorialist supposes that she is mistaken in the first part of this passage; that the three or four days of residence were the three or four days immediately preceding the 29th of November, which he says proves that they must have returned on the 25th or 26th. — 51. C. B.  
P. Mém. pts.  
3. p. 269.

The exact date of the departure from Rheims was not known when Isabel Walker deposed. She attempts to determine it by calculation, and takes her ground from the following month. She is sure that they arrived at London in the week before Christmas: she has traced the several stages of this journey with singular accuracy, and says it took up about thirty-five days. And thus, by counting

counting backwards, from the time of their arrival in London, she has fixed their departure from Rheims to the 18th of November, to the day on which it really happened, according to our old computation.

But having began by computing the Paris journey by the new stile forward from the 2d of November, she has inadvertently brought the nominal days of sir John's return from Paris and departure from Rheims within four days of each other: they were really Nov.  $\frac{2}{17}$  and Nov.  $\frac{18}{29}$ . The witness herself is sensible of some confusion, and owns she cannot tell what stile she used: but it is clear from the whole tenor of her deposition, that she computed by the new stile in the former part of her account, and by the old stile in the last. It is lawful to assist her in a matter of science; and we cannot err in adding eleven days of residence to the four she has mentioned. And thus it is certain she becomes a direct and pointed witness in support of that very fact, which the pursuers call upon her to overthrow; that the family returned from Paris sixteen days before their departure from Rheims, that is, on the 13th of November.

## S E C T. XV.

*Of the journey from Rheims November the 29th, N. S.*

P. P. 241. E. **L**ET us now see how we may compute this journey. The family set out from Rheims November  $\frac{18}{29}$ ; they arrived at St. Omer on Thursday  $\frac{\text{November } 24}{\text{December } 4}$ ; they proceeded on their journey to Dunkirk on Saturday December  $\frac{2}{17}$ . It is certain, that they were at Dunkirk on December  $\frac{7}{18}$ . Isabel Walker calls their stay there fifteen days or more. Mrs. Hewit says, it was about a fortnight. The chevalier Douglas calls it *plusieurs jours*. We can never determine these dates exactly by parole evidence. At a medium the stay here may be reckoned twelve days, and we may date the departure of the family on December  $\frac{14}{5}$ . They were one day at sea, three days at Margate, and travelled slowly in an hired coach to London, which might take up three days more; so that they arrived at London in Christmas-week, O. S. about  $\frac{\text{December } 21, 1749}{\text{January } 1, 1750}$ .

— 51. D. Lord Mark Kerr visited lady Jane, and invited her to dine with him on Christmas-day.

— 51. E. Nothing material happened in the journey, except the observation of the chevalier Douglas, who deposes, that lady Jane's appearance was very different from what it had been during her pregnancy at Liege.

D. P. 40. A.



We have now seen, from what necessity the family were obliged to leave Rheims, a place where they would willingly have staid much longer.—It was within the jurisdiction of the Tournelle.—Sir John Stewart went himself several times to Paris.—They all lived in intimacy with Mr. Maillefer, who had a constant correspondence with his agent Godefroi; and yet the pursuers would have us think, they lived under the fears and terrors of a discovery, and that they had stolen their child while they resided at Godefroi's.

# S E C T. XVI.

## *Of the dates in Mrs. Hewit's depositions.*

MRS. Hewit has been specially attacked on account of the dates, which she has assigned to facts in her several depositions. The most material attack is made against her account of the journey from Rheims to London: this is therefore the proper place to examine the truth of this severe accusation.

Mr. Almon at page 311 (a) has made one of his speakers say, (and it must be owned, that what he says is very much in character) that he will not pretend to go through the whole mass of proof: yet this same person is supposed to have engaged in a criticism on dates; a task, which no person could well execute unless he had gone through the whole mass of proof. He says, "Mrs. Hewit's memory is really amazing, for she forgets only five dates in twenty." What are these five? They are all contained in the compass of time taken up in the last part of the journey, and the time between their leaving Godefroi's and coming to Michel's.

Mr. Anderson knew that this was wrong. Mr. Almon's friend has scarce read through Mrs. Hewit's deposition on the Service. Mr. Anderson undertook to read it for him; in consequence of which he has discovered twenty-six different dates; the exact number which are to be found in that one deposition. He would have us believe however, that he had read the other two. For these are his words at page 419—"In her depositions she mentions twenty-six different dates. In nine of them she is perfectly right; in six she is nearly right; in one she is mistaken from an error in calculation; and in five dates relating to things of no moment, she appears to have been mistaken for want of memory." The remaining five dates he leaves to the readers, and suggests, that they are to be imputed to perjury.

(a) Lord Hailes.



With all this parade of attention Mr. Anderson is little nearer the truth than his predecessor. He has specified the last five dates, and what he says will be noticed in its place : for the rest, it is impossible to know exactly what these gentlemen mean. The writer of these papers must follow his own method, and he ventures to offer to those calculators the following catalogue, as containing a more correct account of the dates in Mrs. Hewit's depositions, than any they have made for themselves.

Serv. 10. D. 1. Lady Jane's marriage is dated August 10, 1746, instead of August 4.

Let us attend one moment to this mistake. No one questions the reality of the marriage; no one mistrusts Mr. Keith's certificate; no one doubts that Mrs. Hewit meant to speak the exact truth. If Mr. Keith had given no certificate of the marriage before his death, which happened previous to this process, Mrs. Hewit had remained the only witness of the marriage. How easy had it been for the zealous persecutors of Mr. Douglas to have proved an alibi on the 10th of August, and overthrown the legitimacy of the defender? When we see the little care which Mrs. Hewit took in a point of the utmost importance to lady Jane, in which she acted a notorial part, can we expect, that she should ever have thought of treasuring up a notorial proof of the delivery?

— 10. E. 2. She says, that they set out from Huntingdon six days after the marriage. This is nowhere contradicted.

— 10. E. 3. That they staid at the Hague four months. This is pretty exact.

— 10. E. 4. That they went to Aix at the end of April 1747. This is true.

— 10. E. 5. That at the end of the year 1747 lady Jane proved with child. This is very indeterminate. She might have known by calculation, that the pregnancy commenced about the 9th of October.

— 10. F. 6. That they left Aix on June the 1st 1748. It should have been May 21st 1748.

— 11. C. 7. That lady Jane was about eight months gone with child, when she left Aix. She was only seven months and twelve days with child, according to the vulgar computation.

— 11. E. 8. That they staid at Liege four or five days. This is exact.

— 11. B. 9. That they staid at Sedan two or three days. Very wrong; they staid nine days.

— 11. E. 10. That they arrived at Rheims about the middle of June. This is inaccurate; they arrived on the 7th.

— 11. E. 11. That they set out for Paris on July the 1st. They really set out on the 2d; but Mrs. Hewit was easily led into this mistake, as they set out very early, and had not been in bed.



12. That they were four days on the road. They were only three days on the road. But as Mrs. Hewit counts from July the 1st, she brings them to Godefroi's on July the 4th, which was the real day of their arrival. P. P. 252. c.

13. She says that they were three nights and three days at Godefroi's, and went from Godefroi's to Le Brun's in the afternoon. This account is consistent with the books of police. Nobody contradicts it but the Godefrois, to whom no credit is due in this particular. —252. G. —253. D.

14. That they were four days at Le Brun's before the delivery. There is here one day too much: unless we suppose that they really went to Le Brun's on the 6th, and returned to Godefroi's for one night more, till the lodgings were cleaned. —252. K.

15. That Mr. Andrieux's money was received on July the 10th, and that on the same day lady Jane was brought to-bed. This date is right, as the fact has been explained in its proper place. Serv. 12. B.

16. That lady Jane was delivered on July the 10th, between three and four in the afternoon. This is right, if there was any delivery at all. —12. B. P. P. 252. K. —254. F.

17. That they staid at Le Brun's ten days after the delivery. It appears by all the French witnesses of credit that they came to Michel's on July the 20th. Serv. 12. D.

18. That Archibald was two nights with the drunken nurse. This is not contradicted. P. P. 254. A.

19. That Archibald was a few days under the care of nurse Favre, before he was placed with the bad nurse from St. Germain's. This is the second of the mistakes; for which it is impossible to account from any other principle than a confusion of memory. —254. C.

20. That they remained at Paris altogether about three weeks. They were there above four weeks.—This mistake was disadvantageous to Mr. Douglas; as, according to Mrs. Hewit's reckoning in the Service, lady Jane must have gone to Dammartin on July the 25th. No one thought this extraordinary in 1761; but since the wonderful reports from the books concealed in the Tour-nelle, we have been brought to think it remakable, that she could go there on the 2d or 3d of August. Serv. 12. D.

21. That they staid at Dammartin about a fortnight. This is pretty exact: their real stay was about twelve days. —12. D.

22. That Archibald was baptized about three weeks after their return to Rheims, when he was about two months old. This is very inaccurate. The child was baptized on the 22d of September, just six weeks after their return; and the child was then two months and twelve days old. —12. F.



- Serv. 13. A. 23. That lady Jane fell again with child about a month after the christening; and when she was near three months gone with child, she miscarried. It appears by a letter of Mrs. Hewit, that lady Jane miscarried about December the 1st 1748, when she was ten weeks gone with child: that is, when the pregnancy had been observed ten weeks.
- 13. B. 24. That lady Jane's pension from the duke was stopt about half a year after the birth of the children. This is a great mistake. The pension was not stopped till July 1749.
- P. P. 258. B. 25. That sir John received lord Morton's money, just before he went for the second boy. This is very right.
- Serv. 13. B. 26. That Sholto was brought to Rheims, when he was about sixteen months old. This is remarkably exact. Sholto was sixteen months old on the 10th of November 1749, N. S.
- Mrs. Hewit has also said in her second deposition, that this happened about the end of October. This is no mistake, when it is explained; it agrees with the former computation.
- P. P. 257. D. 27. That they were three or four days on the road.
- 257. H. 28. That they were four nights at Paris.
- 258. F. 29. That they were four days on the road back. No one knows any thing about these last numbers, except sir John and Mrs. Hewit; and they agree in their account. The abbé O'Neil, Vuyet, &c. are allowed to be grossly mistaken; to say no worse.
- 259. C. 30. That they continued a very short time at Rheims after their return from Paris. This is true, though indeterminate.
- Serv. 31. C. 31. That they set out for England about November; or, as it is written in the two depositions, about the 1st of November. If this passage in Mrs. Hewit's deposition is taken down right, there is a mistake of almost three weeks; this point will be examined.
- P. P. 259. D. 32. That they were about two weeks at St. Omer's. They were nine days there. This is exact enough.
- 259. E. 33. That they were about a fortnight at Dunkirk. They were probably there about twelve days. There can be no complaint of inexactness here.
- 259. E. 34. That they were another fortnight at Margate. This is a great mistake. Isabel Walker says, that they were there only three or four days; and they could not be more.
- Serv. 13. C. 35. That they arrived in London in the week before Christmas. P. P. 253. G. This is certainly right.
- Serv. 13. C. 36. That they remained at London and Chelsea two years and ten months. This is inexact. They staid only two years and eight months.
- 13. D. 37. That lady Jane returned from Scotland to London about the end of April 1753. This is very right.

38. That



38. That Sholto fevered two days after they left Scotland. This Serv. 13. D. is exact.

39. That lady Jane returned to Scotland in August 1753. This — 13. F. is very true.

40. That lady Jane died in November 1753. This is also right. — 13. F.

Thus we have recovered no less than forty dates from Mrs. Hewit's depositions, instead of Mr. Anderson's twenty-six. This gentleman has divided his dates into dates perfectly right, nearly right, errors by calculation, errors through defect of memory, and errors to which he gives no name. He has not told us the particulars of his four first divisions; and it is impossible to guess at them. Perhaps the following observations may contribute rather more to the candid reader's information.

To consider these dates merely according to their importance in the present process, will not lead us into the intention or character of the witness. She was probably all her life a stranger to their importance in the present process. She knew very well, what interested her most: and every man may go to his own common sense, and judge from thence, whether she speaks from nature, or from art; whether her memory was aided by the impression which these incidents made on her mind at the time they happened, or by any subsequent information.

I. That in some other parts of her deposition her dates are right, but vague and indeterminate; in others she is mistaken. Many of those dates seem to have been recently formed upon an imperfect recollection, and to depend one upon the other.

Thus, numbers 3, 4, 5, and 36, in the foregoing catalogue are indeterminate conjectures, which happily agree pretty nearly with the truth.

Numbers 1 and 24 are mistakes, which in the language of Mr. Anderson are to be imputed to want of memory; that is, they are such, of which no account can be given. But the writer of these papers is far from thinking them of no moment to Mr. Douglas, because they happen to be of no moment to that gentleman's argument. They are on subjects, which it seems made little impression on Mrs. Hewit.

Numbers 6, 20, and 26, are also mistakes, of which no account can be given; but we may see clearly, that these mistakes, having once obtained a place in her mind, are the true and necessary causes of the chain of erroneous dates which follow them.

For example, Mrs. Hewit was sure that she arrived at Paris on July the 4th 1748: so that, when she had once dated the departure from Aix eleven days too late, on the 1st of June, she was  
under

under a necessity of pressing the intermediate incidents into too short a space: and this accident created all the inaccuracies from number 6 to number 12.

Again, Mrs. Hewit is not far mistaken in the time of lady Jane's miscarriage; which she knew was not late in the winter 1748. But unluckily, having computed the time of the miscarriage from a wrong date, she has given an appearance of inaccuracy to her account of that fact, which does not belong to it; for, when she had carried the family from Paris a week too soon, and brought on the baptism near a month too early, she was obliged to allow too large a time between the baptism and miscarriage. Any one, who will compute Mrs. Hewit's reckoning from July 4th to the miscarriage, will find, that she has placed it in the month of December, not far from its true date; and see the source of the incorrect computations from number 20 to 23.

These two chains of mistakes will pass with the pursuers for involuntary errors: they cannot pretend, that they see a design of serving Mr. Douglas in computations, which are rather favourable to a presumptive argument against him. The next instance from number 25 to 35 is that, against which they level their force. It must be perjury, because it stands in their way.

II. Mr. Anderson makes his speaker insinuate, that this confusion was affected to prove an alibi from Paris at the time of the enlevement of Sanry's child. One is ashamed to reply to such a suggestion. Whoever was the author of this speech may know, when he will know, that the enlevement of that child happened in January 1750; at least, without any great waste of time or application he may learn, that he has given the witnesses to that story a false and undeserved credit in insinuating (page 449) that they never varied in oath, from what they declared at their first examination. He has had Mr. Andrew Stuart's paper in his hands, who owns, that they first told him, the child had a breast rupture, and was marked with the small-pox.

Indeed we need not have skipped over forty-nine pages of this speech for a misconstruction of the evidence; there is one in the 2d line of the 420th page, which we are now examining. Mrs. Hewit had said, that the second journey to Paris happened at *the end of October*; and the author chooses for a reason well known to himself to quote it in *October*.

The writer of these papers is too secure in the truth to be tempted to imitate such an example. He acknowledges, that the beginning of this transaction is dated at the end of October, the  
middle



middle in the first of November, and the end in the week before old Christmas-day.

But the dates which offered the pursuers the most satisfaction, and from which they will in the end reap the least, are those which relate to the receipt of lord Morton's money, the subsequent journey to Paris to fetch the younger child, and the departure for England. We shall soon see that her mistakes are of no consequence.

We must observe that Mrs. Hewit computes throughout by the old stile. The family received lord Morton's money on  $\frac{\text{October } 22}{\text{November } 2}$ ; they set out for Paris on  $\frac{\text{October } 23}{\text{November } 3}$ . She says they set out about the end of October. They finally left Rheims on Nov.  $\frac{15}{29}$ . She thinks it was the 21st; so that Mrs. Hewit, instead of being guilty of perjury, as the pursuers pretend, in dating these several journeys too early, has, by an unavoidable but slight error in memory, dated them severally a few days too late; and, with this trifling abatement, we may venture to affirm, that her account is strongly confirmed by every credible witness in process.

III. We may now observe, that in all the dates from their arrival at Paris to their entry at Michel's, she is pointed and exact. So far from forgetting any date between their leaving Godefroi's and their coming to Michel's, (as Almon's amanuensis has injuriously charged her) she undertakes to remember, not only the day, but almost the very hour, when every thing happened. It matters not in this argument, though the pursuers have set up two different alibi proofs to contradict her. Duruisseau and Godefroi and all that tribe have been answered already. All we are to observe here is, that she undertakes to remember what every honest man would expect she should remember; and that, if there was any fraud, she has laid herself open to detection by the precise dates she has given to every incident during this short but important period; and for the proof of this we may appeal to numbers 12—18 inclusive.

The same accuracy revives on the subject of Sholto's death, and the consequent distresses and the death of lady Jane. No one can imagine artifice or design in the account of these transactions; but everyone must feel, that the difficulties and distresses in lady Jane's family would make the same impression on the honest heart of this witness at one time as at another; and every one must see, that these interesting subjects are what she relates with an accuracy unknown to the other parts of her deposition; and will therefore impute the strength of her memory in these cases to a natural

cause,

cause, I mean, the real interest she took in the concern of her friend.

*Conclusion of the Fifth Part.*

This period does not afford any thing which can be called a direct proof of the birth of Mr. Douglas; but it is clearly proved by those, who had seen lady Jane during her supposed pregnancy, that her shape and whole appearance was very different at this time from what it was before her delivery: that therefore she must have undergone a delivery, or some other remarkable indisposition, to occasion this alteration.—2d. That she was universally reputed the mother of Mr. Douglas, and of his brother Sholto, by every person, who ever saw her at Rheims or Paris.—3d. That many persons had access to see Sholto: and that it is very highly probable, that lord Blantyre and lady Wigton did see him; at least, that lady Wigton was particularly desired by lady Jane to go and see him, and to write her how he was taken care of: that sir John went twice to see his child from Rheims, besides his journey from Dammartin already mentioned; on both which occasions he carried cloaths with him; which he never would have done, if he had had no child.—4th. That during this time they were in correspondence with La Marre on the subject of this child.—5th. That lady Jane was indisputably capable of bearing children, and had a miscarriage.—6th. That those early suspicions, on which the pursuers ground their argument against the habitude and repute, were nothing at first, but some illiberal jokes on lady Jane's advanced age.—And lastly, that sir John and lady Jane's conduct during this whole period is natural, consistent, and proper upon the supposal of a real delivery, and of their being then possessed of two children; but incredible and monstrous upon the supposition that the delivery was fictitious, and that they were only possessed during this whole period of one child.



## DEFENDER'S PROOF. PART VI.

### INCIDENTS FROM THE RETURN OF LADY JANE TO BRITAIN TO THE CONCLUSION OF THE PROOF.

#### S E C T. I.

*Of the residence of the family on their return to England.*

WE are now to take a view of a scene of great distress, which would draw tears from many eyes. The writer of these papers does not affect insensibility; but he is unwilling to swell his account to an unnecessary length by words, that afford only a presumptive proof; which those, who are said to have called the Supreme Judge of the world to witness to their ignorance and inattention, would certainly affect to despise. He founds his reasoning upon facts; and since both parties have thought proper to bring into proof a multitude of facts and conversations which passed during the period now under consideration, it is his business to relate them faithfully, as they are said to have happened.

When sir John, lady Jane, and the family arrived in London in the week before Christmas-week 1749, they lodged a night or two at provost Archibald Stuart's, before they went to hired lodgings at Mr. John Murray's in St. James's Place. P. P. 51. I.

Lady Jane and the children continued to lodge either with Mr. Murray, or with Mr. William Grindley at Chelsea, till her first journey to Scotland in August 1752; and it seems probable, that they went from Mr. Murray's to Chelsea in August 1751. D. P. 410. D. 371. B. P. P. 368. E.

It is not easy to collect from the printed proof the exact residence of sir John Stewart during this time. He was sometimes with lady Jane at Mr. Murray's; and Mr. Murray deposes, as if sir John had been with her the whole time she staid at his house. Mr. Beadle says, sir John lodged at his house, or within the rules of the King's-Bench three years or thereabouts; and that sir John left his house in May or June 1752. This cannot be true, for sir John had not been in England three years in May or June 1752. There is a rule of court for John Stewart, Esq; to go out of the prison of the King's-Bench dated May 1751; but this probably was only a temporary indulgence. Mr. Grindley says, that during the time that lady Jane lodged at his house, sir John D. P. 410. D. P. P. 367. B. D. P. 882. B. P. P. 368. H.

P. P. 370. G. was confined to the rules of the King's-Bench prison; and Mr. Mackercher deposes, that fir John Stewart lodged for several months in the same house with the deponent in Spring-Gardens, within the verge of the court of St. James's, at the time lady Jane Douglas lodged at Mr. Murray's house, or at Mr. Grindley's at Chelsea. It is impossible to reconcile these accounts; nor is it necessary to do so. They are here mentioned as instances of involuntary error, equal to any of those mistakes, into which fir John Stewart himself has fallen, who says he was only one year in Southwark.

Decl. 15. L.

It is sufficient to remark, that fir John Stewart was for the most part absent from his family, and as far as appears from his correspondence, in confinement.

The facts to be considered in this period relate chiefly to the various reports about the birth of the children, and the conduct of lady Jane and fir John Stewart in consequence of them.

We must first see, what passed at Douglas-castle; next ascertain the time and manner, in which lady Jane was informed of it.

## S E C T. II.

### *Of the reports circulated at Douglas-castle in 1750.*

1st. **T**HE character of the late duke of Douglas is well marked by the Reverend Mr. William Hamilton, the minister of the parish, who knew him intimately many years. “ Mr. Hamilton (says lady Jane) expressed, as he has done all along, a great desire to serve me; but how to perform it, he says, is a task more difficult than any he ever took in hand, my brother's temper being so singular, so inconsistent even with himself, and with what formerly used to be agreeable to him; that how to address a person varying every hour of the day, changing from one sentiment to another, without fixing on any one, one quarter of an hour, he looks upon, and justly enough, as a thing impracticable ever to bring him to think and act aright.” That lady Jane did justice to Mr. Hamilton's conversation, appears from a passage in that gentleman's own deposition: “ Lady Jane said, I thought I had known my brother as well as any body, but it seems he is to know every day: the deponent answered, *So he is.*”

P. P. 923. D.

P. P. 330. A.

Such



Such was the person, upon whose determined resolution and steady belief the pursuers ground one of their presumptive arguments against Mr. Douglas, directly in opposition to the testimony of a witness, whom they have brought into process for the single purpose of describing the manners, which prevailed at Douglas-castle.

The two principal agents in his grace's family were Mr. White of Stockbriggs and Mr. Archibald Stuart. The duke lived exceedingly retired at his own castle, and those gentlemen had a great ascendance over him.

The duke, it appears, had been some years very strongly prejudiced against his sister; the beginning of their quarrel is related in the memorandum of William Greenshiels. His grace had met with some affronts from a mob at Edinburgh; and Mr. White undertook to assure him, that the mob was raised and paid by lady Jane and the colonel, in order to murder the duke, or carry him to St. Kilda. This discourse of Mr. White, the witness affirms, was after lady Jane was married to colonel Stewart. D. P. 896.

Mrs. Hepburn confirms this account from the duke of Douglas's own mouth. — 428. A.  
 “ He said, he did not suspect his sister at the time;  
 “ but that it was Mr. Archibald Stuart and Stockbriggs, who told  
 “ him so; that they also accused his sister of having complained  
 “ of him to the duke of Argyle; which the duke of Argyle many  
 “ years after contradicted, and said on the contrary, that lady Jane  
 “ had entreated him the duke of Argyle, if possible, to procure  
 “ her brother's pardon, and to carry him to London, where it  
 “ would be seen, that the duke of Douglas's only ailment was low  
 “ spirits, and that he needed only to be known to be agreeable.”

Thus alarmed, it is not surprizing, that the duke should give some credit to any report, which was raised against his sister.

It should be remembered, that the people in Scotland were even at this time absolutely in the dark about every incident, which had happened at Aix, Rheims, and Paris. It was left for another generation to form those honourable connections with Mess. Sanry, Duruisseau, Godefroi, and Mignon, which have since appeared in process. The Scotch logicians of those days travelled the high *priori* road, and urged the impossibility of a pregnancy at the advanced age of lady Jane; and this was all.

Mr. Greenshiels, the duke's butler, says, “ that when the news — 897. D.  
 “ of lady Jane's having born two sons came to the duke, he was  
 “ told by several people in the interest of the Hamilton family, that

“ it was impossible her ladyship could bring forth children at her  
 “ time of life, and that they were impostors bought out of an hos-  
 “ pital with a view to succeed to the duke’s estate ; that Stockie in-  
 “ fisted often with the duke in this manner :” he proceeds, and says,  
 he has often heard other reports ; but as they appear by other  
 parts of the proof to be of a later date, we shall consider them in  
 their place.

D. P. 428. c. Mrs. Hepburn says, “ that the duke of Douglas often told  
 “ her, that he had been informed by Mr. Archibald Stuart and  
 “ Stockbriggs, that lady Jane was not in a situation to have chil-  
 “ dren for many years before her marriage with colonel Stewart ;  
 “ and that they said, they had been informed by Mrs. Kerr, who  
 “ had been formerly house-keeper to the duke, that a marble  
 “ table would have a child as soon as lady Jane.”

This Mrs. Kerr is the only person who is quoted as an authority  
 for this extraordinary report: she served lady Jane Douglas eighteen  
 P. P. 45. L. years, and was with her in the house when she went abroad; she  
 has deposed, that as she did not doubt of lady Jane’s being married,  
 — 47. c. neither did she doubt in the least of her having children.

D. P. 435. D. Mrs. Jane Stuart gives the same account of the duke’s discourse  
 as Mrs. Hepburn; and says, the duke was told it by Mr. Archibald  
 Stuart, and major Cochran; and that Mr. Stuart quoted Mrs.  
 Kerr, who had been lady Jane’s servant.

— 899. D. Mr. Greenshiels adds, that Stockbriggs first raised the story of  
 the children not being lady Jane’s, and said he had it from Mr.  
 Stuart.

P. P. 322. B. The reverend Mr. Hamilton says, “ that he has heard the duke  
 — 331. G. “ talk of lady Jane’s children as supposititious; and that his grace  
 “ was apt to take bad impressions from Stockbriggs.”

The pursuers have examined several witnesses to prove, that the  
 duke did express his disbelief of the delivery. The defender is  
 very ready to admit, that he did so; he desires only that it may be  
 remembered, that these discourses were at first held in so artful a  
 manner, that *lady Jane’s uncle* thought they were only jokes; and  
 that when mixed with other quarrels they became afterwards more  
 serious, there was no authority for them except the abused name  
 of Mrs. Kerr; and that they appear to have been raised by Mr.  
 White of Stockbriggs, Mr. Archibald Stuart, and major Cochran  
 who knew nothing of the matter.

Mem. pt. 6. The pursuers memorialist admits, that these three gentlemen  
 p. 10. acted in the manner described by the witnesses. In particular he  
 asserts,



asserts, “ that it is not at all improbable, that Mr. Stuart may have “ had such a conversation with the duke, and that he may have expressed his opinion very strongly on that subject.” Mr. Stuart was probably an illiterate man, and totally unacquainted with the circumstances of the delivery, except what little he learnt from Mr. Colvil; to any one besides the duke he might have expressed his opinion without reprehension, but he certainly went much too far when he expressed himself very strongly to the person, on whom the happiness and even subsistence of these children chiefly depended; and he is wholly unjustifiable in corresponding with sir John Stewart in the manner he did, whilst he expressed these suspicions to the duke \*.

## S E C T. III.

*Of the reports received by Sir John and Lady Jane in 1750.*

**B**UT it is said further on the part of the pursuers, that be the suspicions well or ill founded, lady Jane heard them, and ought to have contradicted them. It is very true, that she heard them as a common slander, and treated them with indignation, and in part too with more consideration than is even due or usually paid to reports, which have no foundation but in the malice and falsehood of those who raised them, and which did not appear of any consequence.

For it was a long time before lady Jane could possibly apprehend, that these reports were believed at Douglas-castle; whether she was ignorant by mere accident, or deluded by artifice, is a point not easily determined. That she was thus ignorant during the first years of her residence in England, appears in proof.

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\* The memorialist perhaps will trouble himself but little to defend the character of this Mr. Stuart; however, he is unwilling that Mr. Stuart's opinion should pass for ignorance, because it is the opinion he is engaged to defend. The physicians, it is owned, have declared, that they know no reason why a woman of fifty may not have twins. But this does not satisfy him; he refers to experience, and wants a well attested example of the fact either in books or otherwise, which he declares he has not found, and believes the defender's enquiries have been equally unsuccessful.—What the gentlemen engaged for the defender may have found, the writer of these papers has not learned; but he has one case before him so much in point, that he cannot help gratifying the memorialist's desire, and transcribing it. He hopes that learned gentleman will not laugh, though it is taken from a Comment upon the Bible. He may find it in the notes of Tremellius and Junius on the first chapter of Ruth. It should be observed, that it is the respectable Emanuel Tremellius who speaks. He was professor at Heidelberg many years, and published his Bible in 1569. His words are, “ Hic in Palatinatu ante annos aliquot vidi oculis meis, & vocatus interfui partui cujusdam feminæ amplius annos 56 natæ, quæ binos mares enixa est eodem partu.” Few people it is believed will mistrust this authority; and the German woman was six years older than lady Jane at the time of her delivery.

Mem. pt. 1.  
p. 22.

P. P. 329. c. The reverend Mr. Hamilton, minister of Douglas, had many friendly conferences with lady Jane in autumn 1751, in which he did not mention a word of these suspicions.

Serv. 58. B. Mrs. Hamilton, that gentleman's wife, in a letter after his return dated November 1751 writes thus to lady Jane: "His grace  
D. P. 993. A. " is in good health, and inquired very particularly about your ladyship and the children; but when my friend (she means her husband) told him that he had seen the two pretty boys several times, " he said that was a great mystery to him, because he had a letter " from a certain nobleman, a relation of your own, advising that " there was one of them just now with him, &c." When the duke was pleased to hold such very different language, could a man of common sense form any other judgment than lord Mark Kerr had formed, that he was all the while in jest?

P. P. 320. H. It appears too, that Mr. Archibald Stuart was at this time the correspondent and reputed friend of sir John Stewart; and so late as April 1752 Mr. White of Stockbriggs thought proper to profess himself lady Jane's friend, and dupe Mr. Hamilton; and from none of these gentlemen did lady Jane ever hear one syllable of these suspicions.

Upon the whole we see, that these suspicions were for a long time only considered as idle talk of little consequence. There were many known causes of dispute between the duke and his sister, but no reason why he should believe the children were not hers; nor was she informed, that he had any suspicions on that head till May 1752. Mrs. Carse was the first informant.

Mem. pt. 2. P. 40. This observation is the more necessary, as the pursuers memorialist has ventured to affirm, " that at their return to Britain they " were much pressed by their friends to get an attestation from " Paris of the truth of the delivery; and that at the very time " lady Jane was refusing to take this plain and infallible method " of clearing up the doubts, she and sir John wrote to Mad. " Tewis."—Directly in opposition to all this, the reader will have great reason to doubt, whether they were ever pressed to get such an attestation; but if they were, he will see, that it must have been full two years later than the application to Mad. Tewis.



## S E C T. IV.

*Of the conduct of the family, and La Marre's letter in 1750.*

LEAVING therefore the further notice of the intelligence to its proper date, we must remember in what manner lady Jane and sir John Stewart acted in consequence of being told, that certain vague reports, which no body owned, were maliciously circulated to their disadvantage.

It appears, that the first effect of these reports was, that sir John and lady Jane were very angry; and this was to be expected.

Next it appears, that these suspicions made an impression on the servants, before sir John or my lady seem to have been affected. D.P. 368. F. by them; which is also very natural. Isabel Walker deposes, “ that while sir John and lady Jane lodged at Mr. Murray’s “ (which must have been very soon after their return) she heard “ sir John read lady Jane a letter, which he said was from his “ friend La Marre; that the deponent remembers that the contents of the letter was, that Mr. La Marre mentioned he had “ got an opportunity of a friend, and had therefore wrote to know “ how sir John and lady Jane, and the children were; that sir — 369. B. “ John was rolling it up carelessly and putting it in his pocket; “ that the deponent having by this time heard of suspicions with “ respect to the birth of the children, she said, that she thought “ that the letter ought not to be so carelessly put up, but that it “ ought to be preserved, as it might be of use afterwards; and sir “ John upon that in a passion damned any person, who should call “ lady Jane’s honour in question.”

In her next examination she adds, that it was at London, on Min. 9. E. occasion of this letter, that she learnt that the man-midwife’s name was La Marre, who at Rheims was called the doctor.

Mrs. Hepburn of Keith remembers to have heard Isabel Walker P.P. 341. K. speak of this letter in a room, where they waited to be examined on the service; and mentions her report with such variations as we always find, when two witnesses engage in a minute relation of insignificant circumstances. Isabel Walker has forgot D.P. 369. C. this conversation, though she says it may have passed. The ground of the story is the same in both depositions. It is sufficient to observe, that this account is totally unconnected with the pretended letters of La Marre produced in process, none of which bear date in

in 1750; that it stands uncontradicted, and rests on the unfulfilled credit of this worthy and sensible servant.

A learned speaker in Almon's book, p. 216, and another in Anderson's, p. 205, are made to say, that Isabel Walker swears positively, that she saw this letter (meaning the fourth letter produced as La Marre's) delivered to sir John Stewart when in Mr. Murray's. If these persons had paid the least attention to the order of time, they would have known that the letter to which they allude bears date in 1752. It had been printed long before Isabel Walker was examined, and she could never have blundered in a designed perjury so far, as to have dated the receipt of it at Mr. Murray's, from whence she knew the family removed in the year 1751; besides, the contents of the letter she saw were very different.

#### S E C T. V.

*Of the application to Mad. Tewis in April 1750.*

P. P. 72. c.

— 1006. F.  
— 11. G.

SOON after this, in April 1750, sir John and lady Jane took a prudent step to obviate these rising calumnies. They wrote to Mad. Tewis of Aix-la-Chapelle, and desired her to certify what she knew of lady Jane's pregnancy. The contents of this declaration made by Mad. Tewis and two other persons, in consequence of this request, have been mentioned in their proper place. The act is dated the 5th of August 1750; but it did not arrive in England till after lady Jane's death in 1753. It was in lady Shaw's hands in summer 1756, from whom it passed successively to Mrs. Napier and Mr. Orr, till at last Mr. Charles Brown delivered it into court.

This attention, which sir John and lady Jane had shewed to the interest of their children, one would think sufficiently satisfactory; but nothing will satisfy some people. They no sooner appear to have applied to Mad. Tewis for a proof of the pregnancy, than another question is started with great vehemence; and Mr. Douglas must tell, why they did not apply to La Marre for a proof of the delivery. The writer of these papers hopes to give some satisfaction on this point to those, who have temper enough, to hear him. Let it be remembered, that it was only a popular clamour founded on the mistaken belief, that a woman of fifty could not bear twins, that was at this time to be opposed.

1st. The



1st. The proof of the delivery was not so easily obtained, nor would it have been so readily accepted by the enemies of lady Jane, as this proof of the pregnancy, which was therefore the most expedient.

La Marre and Le Brun were obscure people, whom nobody knew; a certificate from either of them must have been carried before the magistrate, and made authentick by his attestation, before it could be of use; and then it would have been difficult to have brought it out into publick; for surely no one could expect, that lady Jane should have justified herself in publick, when nobody appeared to accuse her. Does every one, who is slandered in our publick Gazettes, run into a court of justice, and desire to be heard in defence of his innocence? And yet it is pretty clear, that had this way been taken, nothing would have less silenced these clamours. Those, who would not believe Mrs. Hewit, would never have believed Mr. La Marre. Even as the pursuers have stated their case at present, it seems impossible to be true, without supposing one or more French accomplices. One objection would have been raised after another; and as much time and paper had been then consumed, as has since been employed in this process. The cry would then have been, What have we to do with this blind proof of a delivery? Give us a proof of the pregnancy, which, if it was real, must have been notorious for many months to many witnesses. We may judge in what manner some folks reason from a similar case, which is before us in process. Every unprejudiced person must allow, that the late lady Wigton was a much more proper person to visit Sholto, than the chevalier Johnston. Mrs. Greig swears positively, that she heard lady Jane desire lady Wigton to go and see the child; yet the gentlemen, who are against Mr. Douglas, are pleased to forget this; and still cry out, Why did they not employ Mr. Johnston? Just as we are asked, Why they did not write to La Marre, because they happened to write to Mad. Tewis.

On the other hand, if we reflect on the particular situation of Mad. Tewis, we shall see a very singular advantage arising from her circumstances. She was a lady well known to people of the first rank and fashion in Great Britain, and esteemed by all who knew her; and besides she had a daughter married to an English gentleman of character, in whose hands whatever Mad. Tewis wrote might safely have been trusted; and by whose aid it might have been circulated without parade or ostentation through all the families of distinction in Scotland, and even have made its way



perhaps to Douglas-castle. So that in every light this method appears to have been the most expedient.

2dly. This method was the most satisfactory, and if the reader pleases, scientifick. The scandal ran, that the delivery was false, because a woman of fifty years of age was incapable of bearing children. Put the case then, that an honest man, such as Mr. Hamilton of Innerwich, was misled by a false philosophy to think such a delivery altogether incredible, and in the heat of passion to call it a new miracle, which he was not bound to believe on any evidence whatever. What can be done to convince him? When his temper is cooled, he may perhaps be over-powered by the authority of honest Tremellius or Mrs. Hewit, and bend his reasoning to the better quality of an unsuspicious heart. And this is all; his judgment remains uninformed, and he assents to a general fact without the knowledge of any circumstance, which belongs to it. But how much more will he learn, if he is sent for information to the person, who superintended the several stages of the pregnancy? He will then learn the regular progress of every symptom, from the first suppressio mensium, till the child leapt in his mother's womb: he will there be told, that the medicines and diet proper for pregnant women were orderly administered, and had all the effect expected from them; in short, he will know, that there was no miracle in the case. He will see, that God does sometimes continue the powers of generation in all their regular order and force to an advanced period of life: he will be led by philosophy to consider this circumstance as an effect of chastity and temperance, of the right use which had been made of an excellent constitution of body: he will be ready to defend the fact on the very same principles on which he had before opposed it.

We see then, that upon every principle, either learned, popular, or convenient, lady Jane was in the right to apply in the first instance to Mad. Tewis.

Little was done in consequence of this application to Mad. Tewis. A second letter was written in July; but the notorial act was not signed till August, nor sent into England, till after lady Jane's death. The pregnancy was so universally observed and known at Aix, that Mad. Tewis could not but think her attestation of little consequence; and lady Jane was plainly misled into a false security by the absolute silence of all the gentlemen of Douglas, who called themselves her friends. Though sir John was in confinement, she was every where received with all the distinction due to her birth and character; all her acquaintance of  
rank



rank received and returned her visits, except the late duke of Hamilton.

## S E C T. VI.

*Of Lady Jane's pension in August 1750.*

**I**N May 1750 she desired Mr. Pelham to procure her some mark D.P. 970. A.  
of his majesty's bounty, in a letter, which does honour to the  
goodness of her heart, and greatness of her mind. This request  
was attended with the success it merited; and on August the 3d,  
Mr. Pelham acquainted her, that his majesty had granted her a  
pension of 300l. a year. Before the end of this year she was in- — 961. D.  
troduced at court, and successively to their royal highnesses the  
prince and princess of Wales, the duke, and the princess Amelia.  
Can any one believe, that a person, thus honoured by all those  
whose good word is real praise, was at the same time under ge-  
neral suspicion of having committed a capital crime; or that the  
late truly virtuous minister would have interested himself to have — 970. C.  
procured her his majesty's aid to give bread to those children, (for  
in these very terms she asked it) which were suspected to be none  
of hers?

Though lady Jane had now a sufficient income for her present  
support, she had not enough to pay her debts. She had been  
living upon credit ever since her return to England, and sir John 1751.  
was confined on this account, and not likely to be speedily releas-  
ed. This was still a source of great uneasiness.

## S E C T. VII.

*Of the re-baptism of Sholto in 1751.*

**L**ADY Wigton returned home in spring 1751, and lodged at Serv. 28. E.  
Hampstead, when Sholto was re-baptized in compliance with  
the scruples of lady Wigton. Her ladyship had accidentally men-  
tioned this circumstance in her deposition in the service; and  
though it appeared to be very little connected with the truth of  
the delivery, the pursuers had a mind to prove, that it was false.  
This was a direct attack upon her ladyship's honour; for one can  
hardly suppose, they were angry with Mrs. Hewit, and nothing — 14. D.  
more. With this intent they procured a commission from the  
Tournelle to examine witnesses in London; and took the depo- D.P. 1034. C.  
sitions of three persons, the parish-clerk, the presbyterian parson,  
and the woman with whom lady Wigton lodged, who wisely de-  
posed

D.P. 370. B. posed that they knew nothing of the matter; the last of them it seems was positive, that she must have known it, if it had been done there.—However there in the house of lady Wigton, it was really done by the reverend Mr. Colvil; and the fact is established to the entire conviction of all parties. It is really amazing, that the learned adversaries of Mr. Douglas were not led to one serious reflection from this case. They see, that an attempt was made to delude the Tournelle with the negative testimony of English witnesses. Are not they themselves liable to the same deception from the negative testimony of French witnesses, of whose situations and means of knowledge they can judge no more, than the Tournelle could of those of our parish-clerks, or presbyterian clergy?

1752. This incident too affords a striking example of the thoughtless and inconsiderate manner, in which these good ladies used to transact matters of importance. The minister of Hampstead had certainly a right to be told what Mr. Colvil was doing; and if he had not thought proper to stop the re-baptism, which he probably would, he must have entered it in his register. This neglect was precisely the same offence against the laws of the church of England, as La Marre's neglect of enregistering the *ondoyment* was against those of the Gallican church. The affair was transacted too near home to admit of further dispute, or we might possibly have been amused with as many quotations from our own Ecclesiastical Law, as have been brought into proof from Capitation Rolls, livres d'inspecteur, &c. at Paris.

## S E C T. VIII.

Of Mrs. Carse's letter the 14th of May 1752.

— 371. B. THERE is no incident in proof worth our notice, till lady Jane removed from Mr. Murray's to Mr. Grindley's at Chelsea about August 1751. Sir John was then in prison. Lady Jane lived there much in the same manner she had done in St. James's Place; and the first thing, which requires our attention, is Mrs. Carse's letter to lady Jane of the 14th of May 1752.

— 882. D. Mrs. Carse's honest intelligence must be reported in her own words; she says,—“ Some time ago, I had it from a good  
 “ hand, that a certain elevated foolish woman, viz. Archibald  
 “ Stuart's wife, as she was holding out her throng of business,  
 “ and having nobody to assist her, as Mr. Stuart had five  
 “ clerks away with him; it was asked her, Where? She answered,  
 “ fwered,



“ fwered, To Douglas-castle, he having a great deal of buſineſs  
 “ there; and very ſoon, ſaid ſhe, that great and antient houſe,  
 “ the brag of the world, will be quite extinct. How, ſays the  
 “ perſon ſhe talked to, has not lady Jane two fine ſons? Ha,  
 “ ſays ſhe, they'll never be owned by his grace; and all that's  
 “ poſſible to be done againſt her and hers will ſoon be put in  
 “ execution; and a great deal to this purpoſe.”—It appears by  
 the former part of Mrs. Carſe's letter, that ſhe conſidered what  
 ſhe was going to write, as news to lady Jane. It is certainly the  
 firſt notice given to lady Jane, that her brother diſowned the chil-  
 dren, which appears any where in the proof; and it is probably  
 the firſt, that ſhe ever received.

Mr. John Murray, in whoſe houſe lady Jane lodged till about  
 Auguſt 1751, ſays not a word about ſuſpicions: not a word paſſed  
 upon the ſubject between her ladyſhip and Mr. Hamilton, who  
 left London about October 1751; and we are ſure, ſhe could have  
 no ſuſpicion that her brother was influenced by ſuch reports, when  
 ſhe received Mrs. Hamilton's letter dated the 2d of November;  
 nor when ſhe answered it the 23d of December 1751. Mr. Grind-  
 ley ſays only, that he heard, that ſuſpicions were entertained by  
 the duke, both before lady Jane went to Scotland, and after her  
 return; and the frequent converſations he mentions, were before  
 ſhe left his houſe; and Mr. Mackercher, the other perſon who  
 ſpoke to lady Jane on the ſubject in London, expreſſly alludes to  
 the contents of Mrs. Carſe's letter.

Serv. 58. B.  
 D. P. 993. A.  
 P. P. 369. C.

Mr. Mackercher ſays, “ that on lady Jane's hearing of the re- — 971. B.  
 “ ports, ſhe, ſir John, and Mrs. Hewit reſented it much, and talked  
 “ of proſecuting Mr. Archibald Stuart, whom they ſuppoſed was  
 “ the author of this report: he adds, he adviſed them to lay the  
 “ ſtate of the caſe before his majeſty's ſollicitor-general; but does  
 “ not know if it was done.”

Mr. Grindley depoſes, “ that lady Jane often lamented, that — 361. B.  
 “ ſhe had it not in her power to clear the matter up for want of  
 “ money to go or ſend to France for that purpoſe; and ſhe like-  
 “ wiſe regretted, that ſhe could not be at the expence of na-  
 “ turalizing them here.”

It was indeed difficult to ſay, what was the propereſt thing to  
 be done in the preſent caſe. The talk of Mrs. Stuart was not  
 ſufficient ground for any publick act of reſentment againſt her  
 huſband; and there might be ſome reaſon to doubt, whether all Mrs.  
 Stuart had ſaid was ſtrictly true: ſo that after theſe ſeveral propo-  
 ſals,

fals, and doubtless many others, had been talked over, it was thought advisable upon the whole, that lady Jane should return to Scotland; and in this design she was greatly confirmed by her friend lady Catharine Wemyss, who writes thus to her the 15th of July.—“ I was made happy the other day at hearing a report of  
 “ your ladyship's coming to Scotland to see the duke of Douglas, as  
 “ there was reason to believe it would not be disagreeable to him.  
 “ I certainly don't think, were you in one country his grace could  
 “ stand out long; his dear little nephews would plead your  
 “ excuse.”

## S E C T. IX.

*Of Lady Jane's journey to Scotland in August 1752.*

**I**N the beginning of August lady Jane set out on this journey with Mrs. Hewit, her two children, and Isabel Walker. There is a letter from her to sir John in process, dated upon the road the 8th of August, in which she tells him, “ she shall not write again till she gets to Edinburgh.” The reason of which is explained in a subsequent letter to the present sir John Stewart: she went by sea unknown to her husband. This conduct is at once an instance of the great distress, the heroick mind, and tender heart of this noble lady, and points out a principle upon which we may explain all the embarrassing circumstances of her behaviour in 1748.

The arrival of lady Jane in Scotland considerably altered the state of her affairs.—Her honour was supported—her interest with her brother totally undermined. How this happened will appear from a number of particulars, which have been brought into proof by one party or the other.

I. We should observe, that the high *priori* argument taken from lady Jane's supposed incapacity of bearing children, was entirely overturned by her appearance at this time. The hon. Mrs. Maitland, at whose house she lodged—Janet Andrews, Mrs. Maitland's servant—Helen Ferguson, lady Jane's laundress—and Margaret Brown, assistant to Mrs. Ferguson, all joined themselves to Mrs. Hewit, and the servants of the family, and have lived to depose in this process, that lady Jane was capable of bearing children during her residence in Scotland in the year 1752.

Lady Jane, it is said, arrived in Scotland the 18th of August, and lodged at Mrs. Maitland's till the middle of October following—from thence removed to Hope-Park at some distance from Edinburgh.



Edinburgh. This observation will enable us to fix several incidents in their proper order.

Her ladyship's professed business in Scotland was to consult her friends, and visit if possible her brother.

The principal incidents, which the pursuers have brought into proof during this period, are what they are pleased to call lady Jane's explanations, i. e. certain conversations, which she is said to have held on the subject of her affairs. Of these they reckon only three, and by a confusion very necessary to support a certain species of argument, Mr. Loch's conversation is called the first explanation in the Table of Contents; and the visit to lady Stair is called the first in the memorial.

Page 11.

Pt. 2. p. 163.

Lady Jane had in reality, if we give credit to the proof, five different conversations on the subject of her affairs; but they are not all of equal authority. The first with Mr. Loch, and the second with lord Prestongrange, were serious conferences previous to her first letter to the duke, with intimate friends, to whom she was bound to speak truth and be particular, and who would never speak unadvisedly to her. Her discourse with Mr. Archibald Stuart is upon business, and affords a striking instance of that gentleman's conduct. What passed with lady Stair and Mrs. Menzies are more ordinary conversations, in which nothing serious was intended.

## S E C T. X.

### *Of Lady Jane's conversation with Mr. Loch.*

**T**O begin with Mr. Loch.—This gentleman is acknowledged to be a man of strict honour: he was lady Jane's old and true friend: in this character she consulted him with confidence; told him her situation, and learnt from him how to guide herself towards her brother.

His words are these—"In the year 1752, when lady Jane came down to Scotland with the two boys, she made bitter complaints to the deponent of the injurious reports, that had been spread, of her having bought children, and imposed them on the family, with a view to keep up her difference with her brother, and strip her of her right; but she hoped very soon to vindicate herself, for she was determined to go to Douglas herself with her children, and make way to her brother, and represent, and let him know the fact as it stood. When she was  
"conversing

Serv. 25. A.

“ conversing thus with the deponent, he took occasion to ask her  
 “ ladyship, when she was delivered of the children, where, and  
 “ who were witnesses to the birth. Her ladyship told the de-  
 “ ponent, that she was delivered in the house of Mad. Le Brun,  
 “ Sanbourg St. Germain, Paris, the 10th of July 1748; that Mr.  
 “ Pierre La Marre, a man-midwife, assisted her at the birth; Mad.  
 “ Le Brun and her daughter were present, a widow lady who  
 “ lodged in her house, and Mrs. Hewit.”

Such is the account, which lady Jane gave to this gentleman at this time: and in support of his testimony it should be observed, that Mr. Loch is the man in the world, from whom we should most expect to learn these particulars; and that this is the very time when lady Jane had the greatest reason to explain herself. She had never till now learnt the whole extent of the accusation against her.

The pursuers had acknowledged, when they published their proof, that this was lady Jane's first explanation: but before the memorial came out, they felt the necessity of withdrawing that acknowledgment. Mr. Loch's account is omitted in its place; and though he expressly swore, that he had it from lady Jane when she came down in the year 1752, it is tacked to the end of one of sir John Stewart's explanations, which they say was obtained in 1759.

The whole reason, for which this unjustifiable change is founded, depends on the word Sanbourg in Mr. Loch's deposition. This word is also found in a note in Mr. Loch's hand-writing, which he presented in the service, and which he wrote on the scroll of a testament, which he had made for lady Jane in 1753. This word it should seem could not easily be received for Fauxbourg by pronunciation; therefore, say the pursuers, Mr. Loch copied sir John Stewart's note in the year 1759, though he says he thinks he wrote it from what lady Jane, or those about her, had talked to him on the subject.

We see, on what a flimsy thread of reasoning from one supposition to another we are expected to believe that Mr. Loch is perjured; though the pursuers dare not call him so. As these notes are of no farther use than to vindicate Mr. Loch's character, the writer of these papers will take the liberty to introduce them here.

— 361. A. — The first note in Mr. Loch's hand, which he says he thinks he wrote from what lady Jane or those about her had told him in 1752 and 1753, is in these words—“ Archibald and Sholto Stewart's arts were born 10th July 1748, in Madam La Brune's house,  
 “ Sanbourg

Pt. 2. p. 140.

P. P. 360. L.

Serv. 45. E.



“ Sanbourg St. Germain, Paris; present Mr. Peeter La Marre  
 “ man-midwife, Madame La Brune her daughter, a widow lady  
 “ who lodged in the house, and Mrs. Helen Hewit.”

The second note, of which Mr. Loch swears, that he cannot P. P. 360. 1. tell how he came by it, or when, but is sure he had it in 1759, contains the following words in sir John Stewart's hand:

“ the man meadwifs name who brought  
 “ Lady Jean to bed, was Mr. Peeter la Marr  
 “ in Madame la Brun's house  
 “ faubourg St Germain Paris  
 “ Madame la Brune her daughter, and  
 “ Mrs. Helen Huette present  
 “ with a widow Lady who loged in the  
 “ same house, to whom wee wer much  
 “ obliged. *Madame la fever.*”

— 137. P.

It is plain by inspection, independent of Mr. Loch's oath, that the former note is no copy from the latter. The date of the birth is in the first only: Madame Favre appears only in the last; the whole arrangement of particulars is different in the two notes: the singular orthography of the word *Peeter* proves no more, than that both notes were written by Scotchmen: in the rest we see, that Mr. Loch knew how to spell, and that sir John did not.

As to the word *Sanbourg*, it no where appears by the proof, in what manner it came into the printed copies of the service. Mr. Loch deposes on his second examination, “ that he does not know  
 “ what the meaning of the word *Sanbourg* is, which is wrote by  
 “ him on the back of the testament above-mentioned; but that  
 “ he understands the meaning of the word *Fauxbourg*;” from whence one should imagine, that Mr. Loch was not so ignorant of the French language, as to have pronounced the word *Sanbourg* at his examination. Both the clerk and he may have spelt it, as sir John Stewart has done in all his notes, without an *x*, and written their *fau* in such a manner as not to be distinguishable from *san*. The worst that can be supposed is, that Mr. Loch deposed with his note in his hand, and swore in 1761 to what lady Jane had told him according to the tenor of that note, which he has since déposed in 1763 he wrote down at the time the contents were told him by lady Jane, or those about her.

This is a summary of what Mr. Loch has deposed on this subject at two different examinations; from whence we may judge of the accuracy of an assertion, which occurs more than once in the publications of Mess. Almon and Anderson; that Le Brun's house

was never pitched on, till after they knew Michel's house had been found out in 1756 : and of another in Anderson's book, p. 21 ; that we have no account given by lady Jane, further than what passed in her conversation with lady Stair.

## S E C T. XI.

*Of Lady Jane's conversation with Lord Prestongrange.*

HAVING settled the state of facts with Mr. Loch, lady Jane was enabled to apply to counsel in the case. The next conference was with lord Prestongrange, which, Isabel Walker says, happened at Mrs. Maitland's. As both his lordship and lady Jane are dead, we can have no other than this honest witness, who was the only person who heard the conversation:

D.P. 370. c.

She deposes in 1765, that when lady Jane lodged at Mrs. Maitland's, the lord Prestongrange then lord advocate came there to make a visit to lady Jane ; that, when his lordship came in the deponent was dressing lady Jane in one room, and his lordship was put into the next room ; that lady Jane went into the room, where my lord was ; that the rooms were so situate, that the deponent heard the conversation, and heard lady Jane say to my lord, " That since she came to Scotland, she understood that her honour was called in question with respect to the birth of her children ; but that God knew her innocence, and that the children were hers ; that she did not doubt but the manmidwife, who delivered her, was still alive ; and that, if his lordship thought it necessary, she would bring any proof that should be thought proper ; but that his lordship answered, that she needed give herself no uneasiness as to that matter, for that, as her ladyship and Mr. Stewart acknowledged the children, there was no further proof necessary ; and that if any person challenged their birth, they behoved to prove that they were not lady Jane's children."

Min. 10. L.

Isabel Walker has confirmed this account in her subsequent deposition in 1767.

But still there are persons, who profess their disbelief of this account. —A speaker in Almon's book p. 277, (a) is made to say, " She is no less incredible (i. e. very incredible) as to what relates to a conversation, which she says she overheard betwixt lady Jane Douglas and the late lord Prestongrange upon the subject

(a) Lord Kennet.



“ of the birth of the children—Perhaps my lord might say to lady Jane, that she was not bound to prove the birth; but surely his lordship would never advise her against providing herself with proofs to be used afterwards, if there should be occasion for them.” And the same person is made to say in Mr. Anderson’s book p. 361, “ that it is not probable, that ever the lord advocate gave such an advice; he was a man of more understanding.”

This person gives a reason for rejecting the testimony of this witness; and so far all is fair; but he is said to have strangely shifted the terms of the deposition in order to make it incredible. Isabel Walker does not say one syllable about advice against providing proofs to be used afterwards, if there should be occasion; but says, my lord advised lady Jane against making herself uneasy at these reports; and that it was time enough to bring further proof (i. e. to publish it) when the birth was challenged; and that the acknowledgment of the parents was all the proof necessary.

This is very credible. It was law in 1752—It was law in 1758; for lord Shualton gave precisely the same advice to the dutchess of Douglas, as lord Prestongrange is said to have given to lady Jane; and for this we appeal to an unexceptionable witness, the reverend Mr. William Hamilton; his words are these—“ Lord Shualton said to her grace, Why in all world do you teize and vex yourself and the duke by pressing him to take proper steps or measures to prove the legitimacy of the defender Mr. Douglas? for if the duke should grant your desire, it would do the boy much more hurt than good; for it would make many suspect his legitimacy, who had no suspicion of it before;” and he added, “ The boy is lady Jane’s son, he is the duke of Douglas’s nephew, the law makes him so, for he is habite and repute so.”

This account entirely overthrows the learned person’s argument from incredibility; it justifies lady Jane on the side of common sense; and shows that Mr. Douglas was habite and repute the son of lady Jane, in the opinion of two lords of session, notwithstanding those reports, which have been so loudly alledged against him.

A later speaker (a) in Almon’s book page 354 has been made to give another reason for his incredibility; he there says, “ As to the opinion said to be given to lady Jane by lord Prestongrange, that she was not obliged to bring any proof of the birth, I do not believe the testimony of Isabel Walker upon this point; and this, because sir John and lady Jane’s joint letters to Mad.

(a) Lord Justice Clerk.

“Tewis shew to me, that they wanted to have had a proof of the whole, if they had dared to go to Paris to seek it.”—The same argument is repeated by Mr. Anderson page 487. We are here to suppose, that the application to Mad. Tewis was subsequent to the conversation with lord Prestongrange, contrary to the evidence. Mr. Anderson has taken the liberty to encrease the confusion of dates in this embarrassed passage. He says, page 487, “If this advice had been given, lady Jane and sir John could have no motive to rely upon it; and accordingly we find them in their letter to Mad. Tewis, 13th of February 1750, greatly irritated.”

The writer of these papers joins issue with this learned person in one point, and acknowledges that sir John and lady Jane were greatly irritated in February 1750; but he further believes, that lady Jane implicitly followed the advice given her by lord Prestongrange in 1752, and that his lordship's advice is fairly represented by Isabel Walker. This appears from the conduct of lady Jane. In 1750 she was uneasy at the reports, and wanted privately to get the attestation of Mad. Tewis and others. After the receipt of Mrs. Carse's letter in May 1752 she grew angry, talked of prosecuting Archibald Stuart, taking opinions of lawyers, and naturalizing her children, and in fine she hurried down to Scotland to examine the true state of the charge. At this very time Isabel Walker says, she did take the opinion of a very able and eminent counsel.—Subsequent to this advice, with the pursuers good leave I would say *consequent* upon it, lady Jane totally changed her language and her conduct.—She grew bold, dared her enemies to come to the proof, never took any one step towards proving the birth, or made any reply to these slanders. She said she despised them, and held in all places and at all times the very language, which lord Prestongrange is said to have put into her mouth, and which lord Shualton has also said is law.

To crown this remark we should observe, that our knowledge of lady Jane's respect for lord Prestongrange does not depend singly on the testimony of Isabel Walker; lady Jane in a letter to sir John Stewart dated the 18th of November 1752 says, “The lord-advocate is one of my best friends; I am under great obligations to him, which I'm fond of, as I look upon him as a very valuable man, as well as a person of weight, and greatly esteemed.”—If this does not allude to his lordship's advice as described by Isabel Walker, it becomes the pursuers to say, what the obligation was.



## S E C T. XII.

*Of lady Jane's conversation with Mr. Archibald Stuart.*

AFTER these conversations with Mr. Loch and lord Preston-grange, lady Jane's mind was plainly more at ease; on the 19th of October she ventured to write to her brother; the result D.P. 857. c. was no more than had followed from her former letters. The duke made no answer.—Much about the same time she removed from Mrs. Maitland's to Hope-park, where we find her on the 24th of October, when she writes to sir John Stewart. She says — 856. r. in this letter, that she is strongly impressed, that they should soon get some deliverance out of their present calamitous state. — 857. D. Whence these impressions arose, no where appears in print, unless they came from the conversations above reported. The conduct of lady Jane towards Mr. Archibald Stuart sufficiently shews, that her ladyship was sincere.

For on the 27th of October lady Jane had a fatal conference Serv. 41. F. with that gentleman. His business was to engage her to deliver up the few writings she still had in her hands as a security for her fortune. At this meeting every thing passed smoothly and easily. Not a word was said of suspicions or reports. The children were lady Jane's. Mr. Stuart promised, without being asked, to use — 41. D. his warmest endeavours to persuade her brother to restore to her the 30,000 marks which he had formerly made her a present of, an acknowledgment of which she gave up among other papers. He assured her he would do all in his power to incline her brother to restore back the 300 l. a year. On these assurances lady Jane was induced to give up papers of the greatest consequence, without being compelled by any other motive than her inclination to do every thing, which might contribute to her brother's satisfaction. Mr. Stuart accepted the papers, laughed in her face, — 41. C. and never came or sent to her afterwards.

This was a strange oversight in lady Jane, and such as she had great reason most heartily to repent of. She was so much ashamed of her inattention, that she never acquainted sir John Stewart with what she had done; at least it appears he was ignorant of it so late as the 1st of November 1753, not three weeks D.P. 876. A. before her death.

D. P. 1002.

## S E C T. XIII.

*Of the respect paid to Lady Jane in Scotland.*

D.P. 862. B.

ON the 16th of November this year lady Jane attended with her children at a public assembly at Edinburgh on account of his majesty's birth-day. Her sentiments and situation are so clearly explained in a letter she wrote to sir John Stewart soon after, that it would be injustice to the reader to suppress what she has said. " I went, says she, to the assembly this last Thursday, the king's birth-day being solemnized here on that day, because the week before was set apart on account of the holy sacrament; I deal not much in public diversions; it would ill become me as you're in confinement. But our dear little ones and I, as well as you, are under such great obligations to his majesty, that I thought it my indispensable duty to be present on the day that was appointed for solemnizing his birth-day, that I might by that demonstration express publicly to the world the sense I have of his majesty's great goodness to me and mine; and for that reason I took the children along with me; and I cannot really express the warm and kind reception we met with from the whole assembly, which was extremely crowded. Archy and Sholto behaved to a wonder, and were caressed beyond measure; I thought the people would have eat them up: and very many that I did not know complimented me upon their account, and upon my being returned to my own country; so that I wanted nothing to make me perfectly happy on this occasion, but your being there to share in my satisfaction, and so to make it compleat."

The reader is desired to stop here one moment, and reflect on the advice of lord Prestongrange, the behaviour of Mr. Archibald Stuart, which was not yet thoroughly unmasked, and the publick acknowledgment of the children in the most respectable society of ladies in the kingdom of Scotland; and then say, Whether it was possible, that lady Jane could at this moment consider the flanders of anonymous persons as of any real consequence to her or her children.



S E C T. XIV.

*Of Lady Jane's conversation with Lady Stair.*

WE are now to go to the pursuers quarters, and report such idle conversations, as they have been pleased to pick up instead of proof. These were held, as it is said, with the late lady Stair, and with Mrs. Menzies. Miss Primrose, the witness P.P. 68. c., to the first of these conversations, dates it some time after lady Jane came to Scotland; which places it clearly after the facts already mentioned.—And Mrs. Menzies says, her conversation — 80. L. happened before lady Jane went to Douglas-castle; which makes it as clearly the very last.

The conversation with lady Stair is mentioned by three witnesses: they must all be heard.

Miss Primrose, lady Stair's daughter, is the first. The reader knows already (page 191) that this witness has sworn, that lady Jane told her mother a strange story of a stranger lady; and how she and Mrs. Hewit went away to Paris in one day in a post-chaise without sir John, having sent away her own coach; not one syllable of which will ever gain credit with any one mortal upon earth. — 69. A.

She proceeds as follows: "At this lady Stair said, that doubtless  
" Paris never was without British people of credit, which ought  
" to have been at her labour, as, considering her age and the  
" enemies she had with her brother, her labour should have been  
" in a royal manner." To which lady Jane answered, "that was  
" not in her power, as she was but half an hour, or an hour and a  
" half, in Paris before she was delivered." But the deponent does not remember whether lady Stair said to her an hour and a half, or half an hour; but is sure it was one of them.

The next witness, her grace the dutchess of Douglas, is adduced by the pursuers as a haver. It seems that in 1759, lady Stair having been informed, that a certain story had been told in her name at Douglas-castle to the disadvantage of lady Jane, (which will be mentioned in its place) her ladyship came to the duke's house at the Abbey purposely to disavow it. Amongst the rest she said, that the only conversation she had with lady Jane Douglas with regard to her children, was to the following effect: "That one  
" day lady Jane came to her with the two boys, and said in a jocular  
lar

“ lar manner, Do you know that my brother calls my sons *his*  
 “ *Pretenders* ? Upon which lady Stair answered, I wish, lady  
 “ Jane, you had come home, and born them in as publick a  
 “ manner as the queen of England does hers. To which lady  
 “ Jane replied, she was sick to death at sea, and her having done  
 “ so would have both endangered her own health, and what she  
 “ carried about with her ; besides other inconveniencies under  
 “ which she then laboured.”

D. P. 427. c.

Mrs. Hepburn, the widow of William Hepburn, Esq; was  
 present at lady Stair's visit, and gives pretty much the same account of the conversation.—“ That lady Stair said, the only conversation she had ever had with lady Jane about the children was, that one day lady Jane, having gone to visit lady Stair, told her, that her brother the duke called her children *the Pretenders*. Upon which lady Stair blamed lady Jane for not coming home to bear her children in Britain. To which lady Jane answered, that she was sick to death at sea, and would have been in danger of losing what she carried about with her, besides other inconveniencies.”

These witnesses, as well as the noble lady whom they quote, are all persons of honour, and no doubt relate what they heard with all the exactness in their power : yet, I think, every reader will be of opinion, that Miss Primrose has reported the conversation with great marks of inattention and inaccuracy ; and that lady Stair herself gave but a very imperfect account of what had passed to the ladies at the Abbey. As far as it goes, the last account is certainly of the greatest authority. It comes before the court supported by two witnesses, who had great reason to attend to what lady Stair said, and heard it at a time, when her ladyship was explaining herself very seriously on the subject of lady Jane ; so that no hearsay evidence can have a fairer claim to be heard. Miss Primrose has attempted to remember a variety of circumstances, which she has related in such a loose manner, as to render them wonderful and ridiculous.

The pursuers argument against lady Jane is founded on the literal interpretation of the word *half an hour*, or *an hour and a half*. If these words are understood literally, it would follow, that lady Jane told a lie, which is what the pursuers wish to prove : but then surely the expression ought to be precisely and determinately related, and the witness ought distinctly to swear to the very words used by lady Stair ; and be able also to assure the court, that lady Stair related these words to her as the very words used by lady Jane. Instead of all this, the witness fluctuates  
 between



between two expressions, and cannot tell whether lady Stair used *an hour and an half*, or *half an hour*.

This assertion, taken as it is used in a general sense, is both very true, and contributes very much to explain the situation lady Jane was in on the 10th of July 1748. It has been proved, that lady Jane was brought to-bed before she expected it. The whole history of the pregnancy, the women at Rheims, and Mrs. Hewit's letter to the maids, plainly shew thus much. According to Miss Primrose lady Stair objected to lady Jane, that she should have been brought to-bed before some of the British people of credit then at Paris. Lady Jane answered, that was impossible, for she had not time to summon these people before she was delivered; a fact which was strictly true. And if in making this reply, instead of an hour and an half, or half an hour, she had said, she had not had one moment to turn herself in after her arrival before her delivery came on, I believe she would have deceived nobody by such a mode of expression, but those who desired to be deceived.

Lady Jane supported herself with amazing vigour. All her letters dated from Hope Park between the 24th of October 1752 and 10th of April 1753 are written in high spirits, and express the strongest hopes, that there would soon be an end of all her difficulties. This known temper of lady Jane, at the time the conversation with lady Stair happened, strongly countenances the little circumstance of levity mentioned by the dutchess of Douglas, that she spoke to lady Stair in a jocular manner. D. P. 856. 10  
— 867.

Great use is made of this conversation by a (a) learned speaker in Almon, p. 95. and Anderson, p. 11. He is there pleased to say, "We can have no other proof of this account, but what is contained in the oath of miss Primrose;" though two other witnesses to the account appear in process. He goes on to observe, "that lady Stair with great propriety noticed to lady Jane the air of *concealment* and *mystery* attending the delivery," which are all his own words: Lady Stair only remarked the fact as a thing disadvantageous to lady Jane's interest, but never mistrusted her honour till some time after this conference, when her ladyship became the dupe of count Douglas's letter. He then changes the important phrase, as if he understood it generally, and yet desires we would take it literally, and cries out, "What can be a more false account of the matter than this?" He then concludes with supposing, lady Stair had made a very learned allusion to the plains of Palermo; though all that lady Stair alluded to, is explained on oath by the dutchess of Douglas; and it appears she went no farther for P. P. 352. 11.

(a) Lord President.

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her allusion than the queen's drawing-room; and indeed this allusion was not her ladyship's own, being nothing more than a continuation of the *stale joke* which had been long hackneyed at Douglas-castle about *pretenders*. The reader is left to make his own reflections on the conduct of this learned speaker, as it is represented by two publishers, neither of whom he has yet been pleased to contradict.

## S E C T. XV.

*Of Lady Jane's conversation with Mrs. Menzies.*

THE conversation with lady Stair happened some time in winter 1752—53; the next conversation which appears in proof bears date before the visit to Douglas-castle in April 1753.

Mrs. Menzies, relict of a merchant in Edinburgh, deposes,  
 “ That she had been long well acquainted with lady Jane; and  
 “ that being in conversation with lady Jane respecting her children,  
 “ and at the deponent's own house, where lady Jane had come on  
 “ a visit, the deponent, out of regard to lady Jane, and in order to a  
 “ reconciliation betwixt her brother and her, advised lady Jane to  
 “ send to France, and procure the depositions of the physician who  
 “ brought her to-bed, and of the lady or gentlewoman in whose  
 “ house she was delivered, and of the maid-servant of the house,  
 “ whose evidence nobody could call in question, and might be a  
 “ means to convince the duke of Douglas that the children were  
 “ her ladyship's, as the duke did not pay a due regard to Mrs.  
 “ Hewit's evidence; that lady Jane said, that following that course  
 “ was doubting her honour, which the deponent advised her to get  
 “ over for the good of her children; and that if she had any diffi-  
 “ culty she might get lord Morton to write over to France for  
 “ these depositions, which might be left in my lord's possession,  
 “ and would put malice itself to a defiance to hurt her children,  
 “ when her ladyship's head and the duke's were under ground:  
 “ that when the deponent was urging lady Jane to follow this  
 “ course, my lady putting her hand in her pocket said, she had a  
 “ sufficient evidence there; and upon the deponent's asking what  
 “ it was, lady Jane said it was a letter from the physician who had  
 “ laid her, and that she had several from him: depones, that in the  
 “ course of the conversation, lady Jane said, that she knew her bro-  
 “ ther called her children nunnery children.”

Mrs. Menzies tells a round story, with which the pursuers are much pleased; yet it is very doubtful, whether it makes more for one party in this process than the other.



If Mrs. Menzies' account is true, then lady Jane had told her, she was not delivered by a woman but by a manmidwife, or in Mrs. Menzies' language by a physician; that she lodged at that time not in the house of a man, but of a lady or gentlewoman, which is true of no house in which she lodged at Paris, except Le Brun's; and that she had no servants of her own with her, nor hired any at her own separate expence, but was served by the maid of the house. If this is true, it is a full proof that lady Jane told her story as it has since appeared in proof, and confirms Mr. Loch's testimony in every particular. It appears too, that lady Jane said, she had a letter from the physician in her pocket; and the pursuers can never give any direct proof that she had none: indeed no such letter was ever found, from whence there may arise a suspicion, that her ladyship pointed to one of the four letters since produced under the name of La Marre. If she did not know that they were false, no reflection can be made against her for calling *a copy of a letter* a letter in common conversation.

On the other hand there is a suspicion, that the witness's memory has failed, and that this account has been made up since the cause was in process.

1. Mrs. Menzies appears to know a great deal, which nobody knew at this time but herself. Mr. Loch does not say a word about the maid-servant of the house. The duke was thought by every one else to hold the delivery impossible, and not to object to Mrs. Hewit in particular; and the *word* at Douglas-Castle as repeated by the other witnesses was not *nunnery* children, but *pretenders*. Mrs. Menzies is told of a letter from La Marre, of which none of lady Jane's noble friends, not even Mrs. Carle or Mr. Loch, her particular confidants, or Mr. William Hamilton, who acted a middle part between the duke and his sister, ever heard of. It is much against the credit of any fact, when, after it has been investigated many years, and hunted without success by every possible inquiry among all the persons, who by their situation in life were most likely to know the truth, it comes out at once in all its particulars from a witness who was not expected to know one syllable of the matter.

2d. Who is Mrs. Menzies, that she should be so much in the confidence of lady Jane? It does not appear by any evidence but her own, that she was even acquainted with lady Jane. In all the numerous letters which appear in process, in all the idle conversations which have been brought into proof, her name is not once mentioned. Is she any way connected with the family of Doug-



las, for which she professes such a regard? Or was she able by any second-hand means to do lady Jane any service with her brother? Mr. Loch tells us in what a modest manner he ventured to make his enquiries; but Mrs. Menzies hastens into the midst of things, and begins *with being in conversation with Lady Jane respecting her children*, as if these conversations happened every day. Was Mrs. Menzies ever heard to mention this letter of the physician, when the birth was disputed in conversation, in order to silence the scandal by an evidence, which no body as she says could call in question? Not a word of this appears in proof: she reserved, it seems, this important information till the 4th of June 1765.

D.P. 413. E.

3d. There are several marks in the style of the deposition, which seem to intimate, that this story is of a later date than April 1753. Lady Jane never used to talk the language Mrs. Menzies has put into her mouth. She was a woman of fashion, and had travelled. The words *nunnery children* are not sense, and could not be used by lady Jane, who knew what a nunnery was. In the next month after the date given to this conversation, we hear indeed of *hospital children* for the first time; and the rise of that story is dated by Mr. Loch soon after Sholto's death; and Mr. Loch was the first person who told it lady Jane. It was soon circulated in Scotland, and an ignorant person might easily convert it into nunnery children by mistake. There is still another suspicious word or two. Mrs. Menzies advises lady Jane to get *depositions*; and repeats this word a second time. For these last five years all the ears of the Scotch have been stunned with the word *depositions*; but it is next to incredible, that any one should advise a friend to get depositions before the process began, and before depositions could be obtained. Several inquiries were made in 1750 and 1756; but no one except Mrs. Menzies ever asked for depositions till 1763, or talked of *Mrs. Hewit's evidence*, till the service was published.

For these reasons the writer of these papers freely owns, that he cannot pay that regard in his own mind to Mrs. Menzies deposition, which he wishes to pay. He has already stated the consequence which would follow, if what she has said is true.



S E C T. XVI.

*Of Lady Jane's visit to Douglas-Castle in April 1753.*

**T**O return to the history ; it appears that lady Jane was alarmed D.P. 960. E.  
about this time with a report, that her pension would be  
stopt, which made it expedient for her to go to London. She  
resolved however to make one effort before she went, and go with  
her children to Douglas-Castle.

She took Isabel Walker with her, who gives the following ac- Serv. 21. F.  
count—" That in the month of April, lady Jane with her two  
" sons and the deponent went to Douglas-Castle; that lady Jane  
" desired a servant, whom the deponent took to be the duke's  
" gentleman, to acquaint his grace, that she with her two sons  
" were come to wait on him ; and that lady Jane was refused ad-  
" mittance to the house, but was directed to go to a terras-walk  
" to wait the return of the message, which was brought her  
" there, and was, that the duke would by no means see her."

It was generally believed; that the duke was never so much as D.P. 385. F.  
told that his sister was there ; but the true state of that matter ap-  
pears in the account of William Greenshields the butler, who car-  
ried her message. He says, " That when lady Jane came to  
" Douglas-Castle with her two sons, she looked in at a little gate  
" as I was passing through the court ; she called, and I went to  
" her ladyship, who told me she was come to wait on the duke  
" with her children ; that I proposed to open the gate, and carry  
" in her ladyship ; but she said she would not go in, till I had  
" acquainted his grace : that I accordingly went to the duke,  
" and told him my message, at which he seemed a little surpris'd,  
" and stood some time thoughtful ; and then without the least  
" reflection against her said, he had no room to put them in, and  
" asked me where he could lodge them ; I answered, there was  
" room enough ; but he desired me to call Stockbriggs to speak  
" with him ; when Stockie came, the duke and he conversed a little  
" together by themselves ; that Stockie left the duke, came to me,  
" and ordered me to tell lady Jane she could get no access there ;  
" and after lady Jane and the children went away, the duke asked  
" me if I had seen the children ; I told his grace that I had them  
" both in my arms ; that the eldest was black, and the youngest  
" Sholto was as like lady Jane, as ever a child was like a mother."

The



P.P. 320. K. The duke himself has confirmed this account by telling several  
 — 336. G. persons, that it was Stockbriggs who prevented him from seeing his sister.

— 329. H. After this cruel refusal lady Jane retired to Mr. Hamilton's, and  
 D.P. 970. F. wrote a very affectionate letter to her brother. She lodged that  
 P.P. 319. E. night in the town of Douglas, where some conversation passed about her appearing in her brother's seat at Douglas church the next day; but on reflection this was not done, and she left Douglas on Sunday morning.

## S E C T. XVII.

*Of Lady Jane's return to London, and Sholto's death in April 1753.*

D. P. 388. B. **T**HIS attempt to be restored to her brother happened either on  
 — 400. C. the 7th or 14th of April; for on Monday the 16th or Tuesday the 17th she set off for London to secure the favour she had received from the king, with whom some persons were weak enough to think they could prevail by the same artifices they had too successfully used at Douglas-Castle. There is a letter in process from her to sir John Stewart, dated Hope-Park April the  
 P. P. 949. E. 16th, and another dated Newcastle the 20th. In the first of  
 — 950. B. these she tells him, the children are very well: in the second she  
 — 949. F. says, "I have left my dear little ones behind, so you may judge  
 " my stay in London won't be long; they are in good health, I  
 " blefs God."—She excuses herself from telling him the reason of her journey—She does not give any one distant hint of the usage she had received at Douglas-Castle. This conduct, and these sentiments, shew us clearly where her heart was fixed, and are worth more than a thousand arguments of the ablest logician to convince us, that she was the real mother of these children. She  
 D. P. 950. B. took no body with her but Mrs. Hewit, no maid-servant, and tra-  
 — 388. B. velled in a kind of disguise in the stage-coach to save bread to her  
 — 405. A. children, without doing dishonour to the noble house from which  
 — 400. C. she came.

Serv. 13. E. It was the 28th of April before she arrived in London, and the  
 — 7. D. first news she heard was the sickness of her youngest child Sholto,  
 — 22. B. who was taken ill of a fever on the second day after she went, and  
 — 63. B. died at the end of seventeen days. On May the 5th lady Jane thought proper to notify this event to the duke her brother, but in a style of dignity and respect. Whoever will be at the trouble of comparing this letter with the former in the places to which reference is made, will soon be convinced that in both she speaks from nature.



In what manner she felt the loss of the child, may be seen D.P. 401. more particularly in the deposition of one, who was near her at the time. Her health visibly declined from this moment. Those natural powers, by which she had produced these children into the world, now began to leave her; and this shock joined to her other misfortunes was so severe, that she was persuaded she should never recover. Let any honest man turn to the deposition referred to in the margin, and ask his own heart, whether he does not believe Mrs. Macrabbie, and disbelieve Mrs. Menzies.

Lady Jane went and joined her husband in the Fleet-prison, — 405. B. where they lived under the name of Mr. and Mrs. Thomson.

### S E C T. XVIII.

*Of the fresh inventions to deceive the duke and the publick.*

WE must leave them for a time in this melancholy situation, and return and see what passed in Scotland.

The duke had refused access to his sister and her children. The consequence of this without doors was, that many persons supposed the duke would not have taken this violent step without sufficient grounds; so that without other proof, the world began to suspect the birth upon the single credit of this refusal.

— 383. B.  
P. P. 312. L.

But within Douglas-Castle matters were of a different cast. The duke of Douglas was a man of passion, but of strict honour; and of that delicacy of conscience which made him reflect on his wrong conduct with inexpressible anguish. Whether these children were lady Jane's or not, was not the question which worked in his mind at present. She had offered to throw herself at his feet, and convince him that she was wronged. He had rejected her with scorn, and shamed himself in the eyes of the old honest butler, who advised him faithfully; and he knew, he had no reason to give for this strange proceeding but his own will and the idle talk of two or three persons in his family, who knew no more of the true fact than he did: this was a state of mind in which the duke of Douglas could not live long in peace.

This seems to have been the reason, why so much false intelligence was poured in just at this time at Douglas-castle, to lull the duke's conscience asleep, and to justify the previous misconduct by subsequent information, especially as lady Jane was no longer in the way to refute them.

The

The first advice was conveyed in a letter to his grace from major  
 D. P. 413. A. Cochran, just as lady Jane was leaving Scotland. He is pleased to say, with many strong and hard expressions interspersed, that a discovery of the imposture was lately made by the countess of Stair, who had found out by the childrens teeth, that one was six months older than the other; and then he entertains his grace, as he calls it, with the story of lady Kinnaird.

It is no wonder, that the people about the duke at this time should endeavour to terrify his grace with the suspicious story  
 P. P. 386. D. of lady Kinnaird; but upon what singular principle of equity or  
 — 577. logic the libel against that lady has happened to make part of the pursuers proof in this process, the reader must judge.

Major Cochran's information made a lasting impression on the  
 — 307. G. duke's mind. It does not appear to have been known out of  
 — 309. B. Douglas-castle till 1759; for in the spring of that year it seems  
 D. P. 415. D. that lady Stair was first brought to the duke, and with great  
 P. P. 351. C. warmth declared before many witnesses, that every syllable, which had been reported in her name, was absolutely false.

The next contrivance about this time was meant to deceive the  
 D. P. 427. A. public. It was given out, that the duke had received a letter from one count Douglas, which informed him that lady Jane and colonel Stewart had bought these children out of an hospital.

The duke in 1759 denied, that he had received any such letter, or that he had ever said he was possessor of it; yet it is certain, that major Cochran and Mr. Archibald Stuart severally gave  
 — 426. F. out, that the duke had received such account. The first of these  
 — 885. E. gentlemen said, he had seen it in the duke's hand; and the second told the story to Mr. Loch, soon after lady Jane left Scotland, which Mr. Loch very attentively transmitted to Mrs.  
 — 885. D. Hewit soon after Sholto's funeral on May the 22d.

This seems to have been the first advice of this story, which the family now in London received.

The chevalier Douglas says, he was invited to come over to England by a letter from sir John Stewart: “\* qui marca, que  
 “ladi Jeanne devoit arriver bientôt à Londres; qu'elle vouloit  
 “lui rendre l'argent, qu'elle avoit emprunté de lui; & qu'elle  
 “avoit des choses d'une grand consequence à lui dire.” This letter must have been written after April the 23d, when sir John first received advice, that lady Jane was on her way to London,

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\* “Which informed him, that lady Jane would arrive soon in London; that she wanted  
 “to pay him the money he had lent her; and that she had things of great consequence to  
 “tell him.”



by her letter dated Newcastle April the 20th. The chevalier immediately complied, and came for his twenty-five louis d'ors. He found lady Jane in London, and it appears he was there himself on the 2d of June. The chevalier says, that he was told the story of this letter by sir John and lady Jane at London; upon which he observed immediately, that no letters could have been written by his kinsman on the subject of the delivery in July 1748; because the count died in the month of April preceding. He goes on to tell us, that lady Jane desired him to write to count Douglas, the brother of the deceased, who had served in the same regiment, to know if He had written any thing to the duke on this subject.

This was accordingly done. Count Douglas gave ample assurances by letter both to lady Jane, and to the duke, that he never had said or wrote what was imputed to him, or to his brother. These letters are dated August the 4th. They were transmitted by the chevalier Douglas to sir John Stewart the 11th of August 1753. Lady Jane had then returned back to Scotland, and was in her last illness. Nothing seems to have been done by sir John Stewart in consequence of this information till the chevalier Douglas's deposition was taken, and the letters produced in this process by the present lady dowager Stewart.

Mr. Loch in his letter to Mrs. Hewit dated May the 22d had suggested for the first time, that it would be proper to bring some proof by the testimony of the physician, or others that attended her ladyship at the birth, lest they should die. Unfortunately this advice came too late, if the accoucheur of lady Jane was the person there is good reason to suppose he was; for Monf. Pierre Louis de la Marre, of whom so much has been said, died on the 15th of May this year.

S E C T. XIX.

Of Lady Jane's return to Scotland, and death on the 21st of November 1753.

WE know but little of what passed further in the family during this summer. It appears only by two or three letters, all dated in July, that sir John was then in the country, and lady Jane in town. Her ladyship's pension was safe; and as she had promised to go back to her child as soon as she could, it was

D. P. 950. c.

A a a

time

time to perform her promise before the winter came on. She set out the beginning of August, and arrived at Edinburgh on the 12th.

Serv. 13. E. It is clearly proved, that lady Jane was never well after the  
 — 22. B. death of her child. "Her disease, says Dr. Eccles, is wholly in  
 D. P. 954. F. "and near her stomach." It encreased very much after her return  
 to Scotland, and she soon was found in great danger.

— 994. F. In this situation she made one effort more to be received by  
 her brother. She wrote a long and truly affectionate letter  
 to the duke, a copy of which appears in process; but as the  
 letter itself has never been found, it is not certain that she ever  
 sent it.

Serv. 43. A. About the same time she made, or attempted to make, some  
 disposition of her little property chiefly in favour of her son.  
 Mr. Loch has produced a paper, which he calls a *latter will*  
 dated November the 12th, intended to have been executed by  
 lady Jane Douglas Stewart.

— 13. F. A few days before her death she received the sacrament in one  
 of the churches of the city, and from this time she took leave  
 of her son Archibald every night with great affection as a dying  
 woman. This circumstance, remembered by Janet Andrews, will  
 serve to explain that variety of forms, which appears in the  
 printed proofs. She took many farewells of her only child, the  
 true heir of the house of Douglas. One of them, as it is seen in  
 the service, deserves particularly to be repeated: "Four hours  
 " before her death she ordered her only child to be brought to  
 " her; she laid her hand upon his head, and said, God bless you,  
 " my child; God make you a good and an honest man, for  
 " riches I despise; take a sword in your hand, and you may  
 " one day be as great a hero as some of your predecessors."

— 13. F. With these sentiments of gratitude to the Giver of all we possess,  
 D. P. 956. E. and of attachment to this earth by one only tie, her affection for  
 — 388. E. Mr. Douglas, lady Jane died the 22d of November 1753.  
 P. P. 302. K.

— 377. G. It is needless to enlarge upon the character of this excellent  
 lady. She was possessed of the esteem of all who knew her, both  
 at home and abroad; and most loved and esteemed by those, who  
 knew her best, as Mr. Stewart Mackenzie has accurately and  
 faithfully expressed himself; "She had the respect and esteem of  
 " all who were intimately acquainted with her, and particularly  
 " the deponent's in the highest degree." Her character is at  
 this time scarce a matter of opinion: her actions have suffered  
 a very



a very severe scrutiny; by them she will be known and approved to all posterity. Something may be learnt from the preceding pages; and if any thing is wanting, it can readily be supplied from that large collection of her letters, which have been published first in the defender's proof, and since in a separate volume, which the writer of these papers sincerely recommends to every honest reader.

## S E C T. XX.

*Of the letters found in Lady Jane's trunk.*

THE few things, that lady Jane had with her at the time of her death, were packed up in one trunk either by her order before her death, or by Mrs. Hewit immediately after it, and lodged in the hands of Mr. George Lindsay.

Mr. Lindsay has declared, "That he thinks he received this trunk from lady Jane before she left Scotland in April;" but it should seem he was mistaken in the time, as lady Jane's watch was found in the trunk, which had been in pawn, and was not redeemed till her last journey to London. Serv. 22. F. D. P. 959. E.

In the trunk were a variety of things, some of use, and some of none; which is an additional argument, that they were collected by Mrs. Hewit. They had been inspected on the 6th of May 1761, and again a second time on the day previous to the service by the agents of all parties. P. P. 627.

From this repository Mr. Lindsay selected twenty-seven letters and writings, which he exhibited at the defender's service: amongst these were four letters under the name of Pierre La Marre. The pursuers seem very desirous, that these letters should be considered as part of the evidence on the service: but the defender has brought three gentlemen, who were of that inquest, who swear that these letters were never read to the jury. Serv. 22. E. D. P. 411.

These papers were probably in the hands of lady Jane some time before her death; but the exact time is not known. We are sure they were in being, when the trunk was delivered to Mr. Lindsay; for which reason this appears to be the proper time to speak of them.

There are two rules (but of very different authority) which will enable us to form some opinion of them; the inspection of the letters themselves, and sir John Stewart's account of them contained in his judicial declaration.

By a bare inspection of the letters we learn, 1st. That they are copies taken line by line from some other writing; this appears by the very irregular termination of every line; in all other particulars, the folding, the address, and the sealing, they are made to resemble real letters: they have no post-mark: they are all written in one hand, and as far as we can judge at one time, and with the same pen; except perhaps the second postscript to the last letter. 2dly. The style, orthography, phraseology, and every circumstance of their appearance forbid us to think, that they are the work of that man whose name they bear, or of any other native Frenchman; unless we could suppose, that they had passed through a double translation, had been first translated into English, and from thence translated into French by a person very much a stranger to the language. Thus far we are secure: for the rest we must turn to sir John Stewart's declaration.

Decl. 17. 2.

These letters were shown to sir John by the court: he declared, that the letter dated October 1749 appears to him to be of the hand-writing of Pierre La Marre; that the other three are, as he thinks, of the hand-writing of Mr. Andrew Clinton, copied by his order on French paper, which he gave Mr. Clinton for that purpose.—On the next day he said, that another letter, dated June 1752, appeared to him also to be written by Pierre La Marre; and that the other two are undoubtedly of the contents of letters of those dates, which the declarant received from Pierre La Marre.

— 18.

On the day following the letters were again inspected, and it was found, that the impression of the seal on the letter dated August 1749, which sir John took to be a copy, was the same as that on the letter of June 1752—which he declared to be an original.

In this distinction of originals and copies sir John plainly shewed, that his eye-sight had failed him, and nothing more.—He met with another mortification from Mr. Andrew Clinton, who denied that he copied these letters. But as Mr. Clinton has deposed, that he understood very little French, when these letters were written; that he did copy papers for sir John Stewart; and that he has some faint remembrance of having seen a paper signed La Marre: and as Mr. Gray, Mr. Clinton's master, whom Mr. Clinton himself considered as a judge of his hand-writing, has declared, that he could not say whether they were or were not Mr. Clinton's hand-writing; there still remains some doubt how far sir John Stewart is mistaken in this particular. Indeed it is of very little importance, whether we know the copyist or not.

Sir



Sir John has owned, that some of these letters are what he is pleased to call copies: we must now hear the reason for taking copies.—He says, “that lady Jane after her arrival in Scotland having writ to him, desiring him to send down these original letters to her, the declarant gave them to be copied; and, as far as he can recollect, he sent lady Jane these original letters, or the copies; though he is not positive which: that he did intend to send copies altogether, or originals altogether, to lady Jane; but cannot say, but there may have been a mixture of one or other. And being further interrogate, how or for what cause the copies now produced appear folded and sealed like original letters, declares, that he ordered Mr. Clinton to make the copies as like originals as possible; and therefore the declarant supposes, that he folded them, directed them, and sealed them, to render them as like originals as possible; and possibly lady Jane may have desired to have them so folded, directed, and sealed, to render them more satisfying to the persons to whom she was to shew them; and possibly it may have been done, that in case the *principals* may have been lost, the copies might serve in their stead: but that Mr. Clinton will possibly mind better, than he does, the reason of their appearing in this figure.” Decl. 15. c.

Sir John in this passage says, that lady Jane sent for La Marre's original letters; and surely there could be no harm in that.—He then mentions as a conjecture, that lady Jane may have sent for copies as like the originals as possible. Let this latter case be true, the writer of these papers submits it to better judgment than his own, whether there is any thing to blame in lady Jane's conduct; all copies do serve for originals, when the originals are lost; and those copies are thought to have the greater degree of authenticity, which appear to have been written with the most exactness, and to have retained the orthography and pointing of the author; and those are most of all esteemed, which are transcribed line by line from the originals. In this innocent sense Mr. Clinton, or whoever was the copyist of these letters, (for sir John Stewart was not) appears to have understood and executed his commission, and to have transcribed line for line, and point for point, the very words which were put into his hands. It is, upon being asked why the copies were folded and sealed like originals, that sir John says conjecturally, that lady Jane may have desired it; but this must be a mistake, as he had before said, that lady Jane writ for the originals, and therefore could give no directions about copies, which she did not want. That he really remembered

remembered nothing of the reason, appears from his adding, that Mr. Clinton will possibly remember better than he does the reason for their appearing in this figure.

The argument founded on these letters by the pursuers, and by the judges who have spoken against Mr. Douglas, is, that sir John and lady Jane, after their arrival in England, hearing of the suspicions, which the duke entertained of the reality of the delivery, and desirous to remove these suspicions if possible, and knowing that they never had any connection or correspondence with a person of the name of La Marre, and consequently could get no certificate of the delivery from him, they, subsequent to June 1752, when lady Jane was about to set out for Scotland, forged these letters, which she carried to Scotland with her in order to impose upon the duke of Douglas; and that among these was the letter, which she mentioned to Mrs. Menzies before she went to Douglas-castle; and that, as La Marre was then alive, it is highly improbable they would have acted thus, if they could have obtained real letters from him at the expence of a postage from Paris.

This is the whole argument founded on these letters; and if there is compleat evidence of a real correspondence betwixt sir John and La Marre prior to June 1752, when it is said these letters were made up, and if it is shown, that there is no evidence that these letters were made up in the life-time of La Marre, the far greatest part of the argument founded upon the falshood of these letters will not apply to the purpose the pursuers intend.

In the course of the preceding sheets it has been shewn, that in the year 1748 and 1749 at Rheims lady Jane and sir John mentioned their receiving frequent letters from the manmidwife, which gave an account of Sholto's health—Isabel Walker, Miss Primrose, and others mention that these letters were read and explained in their hearing; and Isabel Walker particularly mentions, that in one of these letters, which she heard read at Rheims, Sholto's nurse was recommended as a good one; and lady Jane in many of her letters mentions the accounts she had got from time to time of Sholto's health—If any thing further was necessary to render the proof of this fact convincing, the entry in lady Jane's pocket-book of a letter written to Mr. La Marre in September 1749 certainly would—It is not pretended, that this entry either was, or could be made, with a view to support false letters, which according to the pursuers were not thought of till more than three years after. It is also mentioned in the pocket-book, that sir John had written a letter at the same time to Mr. Waters; and that the letter



ter to Mr. Waters was written, is proved by the copy of his answer in process, which confirms the entry of his having written to La Marre at the time mentioned in the pocket-book; and Isabel Walker has distinctly sworn, that she saw a letter delivered to sir John from La Marre, when they lived at Mr. Murray's in St. James's Place in the year 1750, all which is clearly anterior to the supposed fabrication of the letters in question: so that there is complete evidence of a correspondence between Mr. La Marre and sir John from the month of July 1748 down to 1750, absolutely independent of and unconnected with these letters — If this be so, it is in vain for the pursuers to pretend to argue from these letters, that there never was a correspondence between La Marre and sir John Stewart: so that the whole former part of the argument is clearly inapplicable.

Though it is indeed very certain, that these letters were not made up till after June 1752, there is not the least evidence, that they were made up then — The deposition of Mrs. Menzies has been already considered, and as lady Jane is known to have read and understood French sufficiently, it is impossible, that ever she would carry such letters with her in order to impose upon her brother, who, as she knew, understood that language very well; and she must have been sensible, that shewing him such letters, instead of reconciling him to her and removing his scruples, could not fail of having a contrary effect — Again; is it possible, that she would at this very time have consulted lord Prestongrange as to the expediency of getting a certificate of the delivery from La Marre, if she had been conscious, she could get no such certificate? Further; she had several friends, in whom she could easily have reposed; it may be they did not understand much of the French language; this was an advantage to her; she could have exhibited her letters, and by the help of Latin Mr. Loch and Mr. Hamilton with many others would have easily discovered, that there was something in them about the nursing a child, the casting his teeth, and other subjects, which would easily have satisfied them, that the letters came really from the person whose name they bore. She might have kept the copies from a critical inspection, and circulated the report till it had pierced the walls of Douglas-castle. This was surely the wisest course, to which false letters could have been applied. On the whole, the writer of these papers thinks it certain that, if lady Jane had had these letters in her pocket, she would have shewn them to Mr. Hamilton and Mr. Anderson in the humiliating moment, when she was refused admission to her brother's house.

In May 1753 Mr. Loch wrote to Mrs. Hewit, informing her of the falshood raised by Archibald Stuart; that the duke had received a letter from count Douglas informing him that the children were bought out of an hospital, and advising them to clear up that assertion, and to get the certificate of the accoucheur to the delivery; but this advice was too late, for La Marre was then dead.—Lady Jane returned to Scotland soon after; and no doubt would have sundry conversations with Mr. Loch on the subject of the report mentioned in his letter; and very probably he would repeat the advice to her ladyship, which he had formerly sent to Mrs. Hewit.—In consequence of this her ladyship would no doubt write to sir John, who was still in London, to send her such letters of Mr. La Marre as he had kept; who upon finding that he had lost them all, has probably caused those letters, which were since found in her trunk, to be made out, and sent her.—By this means sir John thought to satisfy his wife's uneasiness, and avoid her just reproaches for having lost these valuable letters.—He dreamt of no further consequence; he never once is known to have enquired what was become of these papers after lady Jane's death; which he ought to have done in common prudence for his own security.—He would have recovered them into his own hands, in order to prosecute the design of imposing on the duke of Douglas, if any such design had been commenced. And yet it is remarkable, that in all his conferences with Mr. Loch, with Mrs. Napier, and others, after his return to Scotland, there is no reference made to these papers. All this amounts to a proof that he never once thought of what he had done, after he had sent them away to lady Jane.—And from the remarkable careless manner, in which these letters are made out, it is very certain, that they must have come to lady Jane's hand at a time, when she was so far gone in her last illness, that she was unable to look at them; for if she had seen them when she was in health, she must have at once discovered, they were neither real letters nor copies of French letters, as there are many words in them, which are neither French nor any other language. The very careless manner, in which these letters are executed, affords the strongest presumption, that they were only meant as a temporary excuse to lady Jane; but that they were never intended to support a fraud.

It is no doubt a misfortune, that none of the real letters, proved and on all hands admitted to have been received by the family at Rheims and London, have been produced; but this is not so wonderful as some people have imagined; for not one of the letters received by  
them



them at Rheims, any more than these from La Marre, are preserved; and as few of those received at London by sir John are now extant, except those which he received when in gaol, and which were left at Beadle's. But still, let it never be forgotten that a correspondence between sir John and La Marre is proved; which entirely destroys the pursuers whole argument arising from these letters; for if any fraud was committed, La Marre was an accomplice, and therefore they could have got a real certificate from him, whether the birth had been real or not, if sir John had thought of asking for one during his life-time. So that let this transaction bear what name it may, it is just such a proof, that sir John was capable of imposing children on the world which were not his, as one has sagely produced from the conduct of lady Jane, who argues, that she was capable of committing a capital crime, because she went to Scotland by sea, when she wrote her husband as if she had gone by land.

## S E C T. XXI.

*Of the condition of Mr. Douglas, and the duke's settlements after Lady Jane's death.*

LADY Jane died in great distress; the duke her brother had the honour of burying her after his fashion; but there was no provision for the present defender, but what depended on the gratitude and humanity of the much-injured companion of his mother. Mr. Colvil tells sir John Stewart on November the 27th, "Stewarty is very well: some ladies have been making some  
 " proposals to Mrs. Nelly about him; but she will do nothing  
 " rashly, till she consult you upon it." But before the end of — 972.  
 the year 1753 the defender was relieved from his distress by lady P. P. 14. A.  
 Schaw, who took him to her own house, and bred him up as the — 14. B.  
 son of lady Jane Douglas. Upon the death of this lady, which — 306. G.  
 happened in autumn 1757, lord Cathcart took him under his care, and continued his friendly patronage and protection, as long as it was necessary.

There are two letters in process from Mrs. Hewit to sir John Stewart, dated severally March the 22d and April the 15th 1754. These are on the subject of some little family affairs, and the defender is mentioned in both with that artless simplicity and strong attachment, that it is morally impossible to conceive, they could  
 ever be written from one accomplice to another. D. P. 958. & 959.

The duke seems to have retained some little remains of affection for his sister to the very last: during her life-time he never made any settlement to her disadvantage. In October 1754 he made the first settlement in favour of the family of Hamilton. Mr. White of Stockbriggs died in 1756, and the settlements were further enlarged in favour of the same noble family in 1757.

The facts are thrown together a little out of the chronological order, because the favour of lord Cathcart was a direct continuation of the preceding kindness of lady Schaw, and the settlement in 1757 was a mere supplement to that of 1754.

## S E C T. XXII.

*Of Sir John's Stewart's conversations with Mrs. Napier in 1756.*

THE only points, which remain to be considered, subsequent to lady Jane's death are, the incidents which happened on sir John Stewart's return to Scotland; and the consequences of the duke's marriage in 1758.

Sir John Stewart was in Scotland in spring 1756. This is the æra of what the pursuers call sir John Stewart's explanations. The whole account of these conferences must be laid before the reader in the words of the truly honourable witness, who was the only person to whom they were told.

P. P. 9. F.

Mrs. Napier deposes, “ That in consequence of lady Schaw's  
 “ desire she spoke to sir John of a report being spread, as if lady  
 “ Jane never had any child; and that the two children belonged  
 “ to other people, and had been brought over from France by  
 “ them to serve some purpose of their own; for which reason she  
 “ hoped, sir John would excuse her being desirous to have that  
 “ affair put in as clear a light as possible, both for the sake of the  
 “ then only remaining child, as well as for the vindication of his  
 “ own honour and lady Jane's memory: for which reason the  
 “ deponent proceeded to ask him as many questions, as then oc-  
 “ curred to her, with respect to where the child was born, who  
 “ were present and assistant on that occasion.—In answer to which  
 “ questions sir John answered this deponent, that so many years  
 “ had passed, and so many misfortunes had happened to him,  
 “ some of which he enumerated, that he could not be so distinct  
 “ in names as he could wish, in answer to the deponent's questions.  
 “ Depones, that upon the deponent expressing, that she could  
 “ not understand how that might be; sir John told her, that for  
 “ different reasons they had been obliged to change houses often  
 “ about



“ about the time of lady Jane’s lying-in, particularly because one  
 “ of the houses was full of buggs, and another smoaky, so that he  
 “ could not say what precise house the children were born in;  
 “ but he would consider of it at home, and make a note of all  
 “ these circumstances; to which the deponent said, she would  
 “ be glad, if in the mean time he would mark down such parti-  
 “ culars as he was sure of, and let her have the others when more  
 “ at leisure.”

In consequence of this sir John wrote a memorandum himself, which Mrs. Napier produced in process, and which contains the words which follow.

“ Monsieur la Mar Accoucheur  
 “ chez Madame Michelle  
 “ faubourg St Germain a Paris  
 “ dans le moy de Juliet ver le  
 “ commencement du moy 1748  
 “ Monsieur & Madame Stewart  
 “ logerent ou Mad. Stewart  
 “ accoucha du Jumeaux  
 “ presnte l’hotels et sa fille Marie  
 “ Monsieur la Mar accoucheur  
 “ et Madamoyse Huette  
 “ This memorandum given to Mistres. Napier  
 “ the 13 of May 1756 by Jo. Stewart”

In consequence of this information Mrs Napier wrote to lady P. P. 2. A.  
 Fanny Stuart, then at Brussels, and desired her to make further — 3. G.  
 enquiry; her letter is dated the 6th of July. Sir James Stewart — 25. C.  
 wrote to principal Gordon from Spa, July the 20th, and to Mr.  
 Macnamara on the same day.—Mr. Macnamara’s answer, dated  
 July the 30th, is full on every point to which he had been wit- — 5.  
 ness, the pregnancy, and the universal acknowledgment of the  
 children by all the Scotch and French at Rheims. Mr. Gordon  
 answered on August the 17th, that there was no delivery at Mi- — 4.  
 chel’s; but that Mad. Michel said, Mad. Stewart kept her bed on  
 account of her being lately brought to-bed, she believes some-  
 where nigh Versailles.—These accounts were sent by lady Fanny  
 Stuart to Mrs. Napier in a letter dated August the 28th.

In the mean time sir John Stewart returned to Mrs. Napier,  
 and gave the further information he had promised her. Mrs. Na-  
 pier says, “ that she knows she had a subsequent conversation with P. P. 10. 1.  
 “ sir John Stewart upon the same subject about the time of her — 11. B.  
 “ lying-in, in which he related more particulars, from which she  
 “ made a little memorandum of names.”

This memorandum in Mrs. Napier's writing contains the following words :

“ Madam Le Brun Fauxbourg St. Germain; colonel Fontaine,  
“ oculist to the Invalids at Paris; Monf. Le Marr Valoon sur-  
“ geon to a regiment several years.”

P. P. 11. D. Mrs. Napier, before she left Scotland in November 1756, sealed  
up several papers belonging to Mr. Douglas, and gave them to  
— 16. L. Mr. Orr; on the 12th of August 1761 Mr. Orr delivered them  
to Mr. Charles Brown. Mr. Brown, being called upon to exhibit  
the writings he had received from Mr. Orr, has produced  
among others a note in fir John Stewart's writing, which Mr.  
Orr never remembers to have given him. The dispute between  
these gentlemen is luckily of no consequence in the present process.  
This note also has been shewn to Mrs. Napier, and it is to be con-  
sidered as relative to her oath.

— 11. A. The note being shewn to her, she says, “ that she believes the  
“ same is of fir John Stewart's hand-writing; and that it agrees  
“ with particulars they had talked over in the conversations she had  
“ with fir John Stewart: but as the deponent lay-in about that  
“ time, she does not recollect the particular delivery of that paper.”

This note contains the following words:

P. P. 17. D. “ from Aix-la-Chapelle  
“ to Liege,  
“ to Sedan,  
“ to Rhetelle,  
“ to Rhym, where wee feard a miscarriage;  
“ to Paris in the stage-coach.  
“ Lady Jean brought to-bed of two boys,  
“ July 10th, N. S. in Madame labrunes  
“ house faubourg St. Germain the  
“ 20th Removed from that buggy house  
“ to Madame Michels, house near  
“ the Pont St. Michell  
“ then went to Dammartin for  
“ fresh air where Lady Jean Recovered  
“ health and strength and so re-  
“ turned to Rheims in Champagne  
“ where Lady Jean had a mis-  
“ carriage and in about 14 months  
“ after Came to London  
“ N. B. Lady Jean in her Paris expe-  
“ dition took no other designation



“ than Madame Stewart from the  
 “ poverty wee were in at that  
 “ time.”

This is a full account of Mrs. Napier's evidence, and the several notes which depend upon it. Perhaps there never was a more unjustifiable freedom taken with any evidence, than that which is used by the pursuers learned memorialist on this subject. The substance of his argument has unfortunately crept into Almon's book, and may be read at pages (a) 91, 284, and 346. In the first place we are referred to, we are told, that “ the first accounts given  
 “ by fir John Stewart of this matter were in a note written by his  
 “ own hand to lady Schaw in the year 1756, wherein he expressly  
 “ avers the delivery to have happened in the house of Mad. Michel;  
 “ and at the same time Mrs. Hewit writes to the duke of Douglas a  
 “ letter expressly fixing upon the same house as the scene of the  
 “ birth: there was then no mention of a Le Brun's; and indeed  
 “ this was never the house pitched upon till after they both knew,  
 “ that upon much enquiry by fir James Stuart and principal Gordon, the house of Mad. Michel had been found out, and that no  
 “ delivery had happened there: then, and no sooner was it, that  
 “ fir John alters his tone, and writes a second note transferring the  
 “ scene to Le Brun's.” Pretty much the same account is contained in the correct edition of Mr. Anderson, page the 23d.

The writer of these papers humbly begs leave to dissent from almost every particular specified in this laboured period, for the following reasons:

1st. Because he has learned from the testimony of Mr. Loch, a witness whose credit has never been impeached, that lady Jane mentioned Le Brun's house as the place of the delivery in 1752. *Serv. 25. c.*

2d. Because Mrs. Napier has deposed, that fir John in the second conversation gave her more particulars, and that the note produced by Mr. Brown agrees with particulars they had talked over in the conversations; the consequence of which is, that the conversations were as consistent as the note; and that the whole account given to Mrs. Napier was the same with that note, and with that series of facts, which has been since proved by a variety of witnesses.

3d. Because there is not the least shadow of proof, that fir John or Mrs. Hewit ever heard of the enquiry made by principal Gordon, or that fir John's second conversation was subsequent to

(a) Lord President, Lord Kennet, Lord Hailes.

P. P. 8. K.

P. P. 3. B.

the receipt of lady Fanny Stuart's answer: on the contrary, Mrs. Napier dates the conversation about the time of her lying-in, on August the 5th, and lady Fanny's answer is dated from Spa August the 28th. August the 28th 1756 was a Saturday: a letter of this date could not leave Ostend before the Wednesday following; and it appears by the office-books, that this mail did not reach London till Friday Sept. the 3d. It appears simply addressed to the Hon. Mrs. Napier, and came under cover to Lord Cathcart in London, as Mrs. Napier had desired it might. On Saturday it was sent forward to his lordship by the Scotch mail, and arrived at Edinburgh on September the 8th, when she had been some time in company; and not only every necessity, but every ceremony of child-birth had passed and been forgotten.

Mem. pt. 2d.  
p. 128.

The pursuers memorialist has used a very singular method to shorten the time of the arrival of lady Fanny's letter. He ventures to alledge that the old stile was in use in Scotland in 1756; that therefore the date of August 28, means August the 17th; and that the letter must have been received before the end of the month. This is the more remarkable, as this gentleman had forgot that there weretwo stiles in use in 1749.

4. Because it is easy to prove, either that sir John Stewart neither saw it then, nor at any later time previous to its publication in this process; or, that he acted a fair and candid part. Sir John had mentioned Mad. Michel: if the delivery had been an imposture, as soon as sir John was acquainted with what Mad. Michel told Mr. Taite, Mrs. Hewit would have known it too, and they would have both readily adopted that part of her information, which was so favourable to their cause, and in which they were sure of so disinterested a support: they would have said lady Jane kept her bed at Michel's.

5. Because sir John Stewart never thought or said, that lady Jane was delivered at Michel's. As this first note is the only part of the French proof, which the pursuers have neglected to translate, the writer of these papers will venture to present it to the reader in an English dress:

“ Mr. La Marre, man-midwife  
 “ at Madame Michel's  
 “ in the fauxbourg of St. Germain at Paris  
 “ In the month of July towards the  
 “ beginning of the month 1748  
 “ Mr. and Mrs. Stewart  
 “ lodged where Mrs. Stewart

“ was



“ was delivered of male twins,  
“ in the presence of the landlady and her daughter Mary,  
“ of La Marre the man-midwife,  
“ and of Miss Hewit.”

The reader will easily perceive by comparing this note with Mrs. Napier's deposition, that it contains three distinct answers to three different questions proposed by Mrs. Napier.—She asked, Who was the man-midwife? Sir John answered, Mr. La Marre.—Again, Where did they lodge? Sir John mentioned the first name which occurred, and said at Mad. Michel's.—In reply to a third question he answered as distinctly, as his memory would enable him: he told the time and the witnesses; but left a blank in the sentence for the name of the person with whom he lodged at that time: common sense will not permit us to fill up this void in grammar with the name of Michel, because the name of Michel was before his eyes, and he would certainly have repeated the name, or referred to it, if he had meant to say what has been hastily imputed to him: any other name would complete the sense, as soon as it was recollected, but the name of Michel never can. Mrs. Napier has minuted the name of Le Brun, which he told her afterwards; and she has sworn, that the note produced by Mr. Brown contains the substance of the two conversations she had with Sir John Stewart.

6. Because there is no proof, that Mrs. Hewit ever wrote to the duke of Douglas; indeed a scroll of such a letter was found after her death without name or date, in which she has fallen into a mistake in one landlady's name for the other. There is no proof that this paper was written in 1756, and very convincing proof that Sir John was not privy to it.—Had he dictated the scroll, Mrs. Hewit had never fallen into an error, which Sir John and Lady Jane knew how to correct.—Mrs. Hewit has repeatedly sworn, that she never remembered these French names, though she ventured to speak of them in conversation as she heard them from Sir John. She probably picked up this word from Sir John, who never knew to what she meant to apply it. Sir John spells the name Michelle, Mrs. Hewit Michal. It is scarce credible, that she entertained so vain a thought as to write to the duke in 1756, when she knew the circumstances of discredit, under which she laboured with his grace. A few years after she might have been tempted to have used such a liberty.

To do justice to the pursuers agents it must be acknowledged, that Mrs. Napier was the first who fell into the mistaken interpretation

tation of the note in 1756 — To do justice to that honourable Lady it must be remembered, that she has declared upon oath, that both sir John Stewart's conversations were consistent like the note produced by Mr. Charles Brown. It were to be wished, that messieurs Almon and Anderson had not adopted this error, as it seems to be the great support of all the opinions, which have been formed against Mr. Douglas.

## S E C T. XXIII.

*Of the enquiries made at Douglas-Castle in 1758.*

WE have now done with the litigated points: nothing remains but to state those facts, by which the duke of Douglas was induced to revoke the settlement he had made, and make way for Mr. Douglas.

In March 1758 the duke married a respectable lady, descended from a collateral branch of his own family. This event was favourable to the defender, as it led the duke into the company of people of rank and character. It appears from the depositions, that much conversation passed about Mr. Douglas very early after this marriage. The duke produced major Cochran's letter in justification of his conduct, and declared, that if he could believe the child was lady Jane's, he would leave him his whole fortune. This was a very great point gained in favour of truth and Mr. Douglas. The evidence was ready to be summoned as soon, as the duke would be pleased to listen to it. For this advantage the defender is very probably obliged to the same noble benefactress, who has protected him in this process with distinguished intrepidity.—Her grace was yet very far from acting with partiality for Mr. Douglas, or with resentment against any other claimant. Even so late as February 1759 we learn from Mr. Hamilton, that she was still pleading with the duke, only that enquiries might be made into the truth of the birth.

D. P. 419.

— 421.

— 426.

— 428.

P. P. 431. F.

— 439. E.

— 898. I.

P. P. 325.

This enquiry began (at least as far as we know from the printed proof) in October 1758, several months after the duke's marriage. The dutchess of Douglas then engaged Mr. Harper to examine Mrs. Hewit; she acquainted him with many particulars, which she has since deposed in process; and solemnly affirmed, that she received these children from the womb of lady Jane Douglas.



## S E C T. XXIV.

*Of enquiries made in the Abbey in 1759.*

**I**N December 1758 an accident happened, which greatly facilitated these enquiries. Douglas-castle was burnt down, and the duke and his family were obliged to reside at the Abbey in Edinburgh.

Here his grace saw a greater variety of company; and was in the midst of all those persons, who could give him that conviction, to which his heart was now open.—Mr. Loch brought him the information he had received from lady Jane, and from sir John Stewart.—Lady Stair waited upon him, and contradicted every syllable, which had been asserted in her name to the disadvantage of lady Jane.—Sir John himself ventured to write to the dutchess.—The pursuers are pleased to observe in their table of contents, that it is remarkable, that this letter makes no mention of the accoucheur of lady Jane, or the house where she was delivered; but they do not tell the reader all they know: the particulars, which are omitted in this letter, may every one be found in the note which sir John had given to Mr. Loch,—and which before this time had been shown to the duke.—Even Mrs. Hewit and Isabel Walker, and Mrs. Hepburn of Keith, were soon admitted to his grace's presence; and fully satisfied him, that Mr. Douglas was the son of his much injured sister.—Which of the honourable lords, who have determined against Mr. Douglas, will venture to say, that he knew the character of Mrs. Hewit better than the son of the marchioness of Douglas?

D. P. 413.  
— 428. c.  
— 415.  
P. P. 352.  
— 525.

P. 17.

D. P. 429. e.  
— 430. c.

## S E C T. XXV.

*Of the revocation of the Duke's settlement in January 1760.*

**T**HE new year opened with the revocation of all the settlements made in favour of duke Hamilton. This happened on January the 5th, 1760. Those, who suppose, that Mr. Douglas has no other claim than the death-bed settlement of his uncle, are greatly mistaken. From this time, which was a year and a half before the duke's death, he became heir at law to all the estates of his noble family.

1760.  
D. P. 1005. A.

This ought to be particularly attended to, as some speakers in the books of Mess. Almon and Anderson have been misled on the subject. One says, "that the state of Mr. Douglas was  
" controverted by the duke of Douglas to the last period of

C c c

" his



“ his life.” The duke never controverted the state of Mr. Douglas : he disinherited him in 1754 and 1757 ; but in the very act of disinherison he considers him as the son of lady Jane. Another gentleman says, “ There is clear evidence, that “ the duke of Douglas, till the eve of his death, never acknowledged the defender as his sister’s son.” It were to have been wished, that these gentlemen had defined what they mean by the words “ last period of life,” and “ eve of death.” The law indeed has attempted to instruct us : but these gentlemen are so little satisfied with the legal definition, that they have enlarged the time of *eve of death* through about eighteen months of the duke’s life, the greater part of which he enjoyed in good health.

Serv. 25. F.  
D.P. 459.

Sir John Stewart near the same time succeeded to the estate of Grandtully ; and was enabled to shew the defender a very distinguished mark of his parental affection. He settled 50,000 marks on the defender his younger son : and Mr. Loch, who was a witness to the transaction, deposes, “ that he was obliged to use “ his influence, that the family might not be further charged.”

From the day, on which the duke left the law of Great Britain to make his will, he continued to enjoy a peace of mind, to which he had many years been a stranger.—He was now doing what his heart approved. He condescended even to visit Mrs. Hewit ; and made her several presents. Mr. Archibald Stuart had quitted the duke’s service in August 1756, a year and half before his grace’s marriage. And it does not appear that from that time either Mr. Stuart himself, or any other person of his sentiments, had access to the duke, or that they were brought into the presence of Mrs. Hewit.

#### S E C T. XXVI.

##### *Of the Duke's settlements and death in 1761.*

— 1066. D. **O**N the 11th of July 1761 the duke executed two deeds : by the first, which was a settlement of his estates, the heirs in remainder are more obliged than the defender. But Mr. Douglas has for ever reason to bless the memory of his uncle for the event, which procured him the inestimable protection of the dutchess of Douglas, and the duke of Queensberry.

— 321. H. The duke died in July 1761 with no concern upon his mind, but what arose from reflection on the injuries he had done his sister.

Serv. 30. F. On the 9th of September following Mr. Douglas was served his nearest and lawful heir of tailzie and provision in general, by a respectable jury : the witnesses were cross-examined on the part of duke Hamilton and lord Selkirke.

Sir



Sir John Stewart lived till June 1764. A few days before his death he made a solemn declaration, as stepping into eternity, that the defender was his son by his lawful spouse lady Jane Douglas.

Such is the series of facts, which have been brought into proof rather with a design to impeach the conduct of the actors in this scene, than as affording any direct proof of the point in dispute. —It appears pretty clearly, that lady Jane Douglas acted an uniform and consistent part: and we may ask every intelligent reader, whether he ever knew a parent resemble his child more than the petit piece, which was acted before the duke of Douglas, resembles the greater drama, which has engaged the attention of two kingdoms.

### C O N C L U S I O N.

DECENCY requires, that the reader should be treated with some respect in return for the fatigue of examining these papers, which by the exuberance of the subject have swelled into a book. They are still only to be considered as an index to the two volumes of proof. The author has too much diffidence in himself, and too much regard for his readers, to desire that any one should take his quotations on trust without referring to the authentic copies of the depositions. With this honest and sincere protest he might have been allowed to take his leave: but Mr. Anderson has tempted him to trespass farther on the reader's time. Under the name of the first speaker in his edition he has proposed an arrangement of the argument; well calculated to confirm the truths, which have been already offered to the reader's attention. The foregoing method is inartificial: the following is scientific. The maxim on which the writer founds his division is unexceptionable, "that truth is simple and has no need of disguise." He then observes, that a story to gain credit ought to be, 1st. *Probable.* 2d. *Attended with no inconsistencies.* 3d. *Without covering or concealment.* 4th. *There ought to be no attempt by false or indirect means to support it.* 5th. *It ought to be uniformly told, not by the words only, but by the actions of those concerned.*

The respectable person, whose name is prefixed to this arrangement, is said to have applied his logic to the conduct of sir John Stewart and lady Jane Douglas: from this application we beg leave to dissent. If the enquiry had been recently made, and lady Jane had been living to answer for her conduct at a time, when all the motives for that conduct had been fresh in her memory, the



demands and expectations of this learned person had been just : but it seems hard to try the conduct of lady Jane by this rule, when it is probable, that there is no person living, who can fill up all the blanks in the history ; and when lord Crawford, lady Wigton, Mad. Tewis, and Mad. Andrieux, who certainly could have explained many things, are dead ; and when witnesses at a second and third hand have been examined with the single intent of rendering the story inconsistent.

The following view, it is hoped, will not be liable to this objection. It is designed to examine the merit of the two volumes of proof on the issues above-mentioned.

I. The story must be probable.

1. The defender's story has been told at length already ; and it should be impertinent to repeat it. Mr. Anderson's speaker thinks it improbable, that lady Jane would have travelled from Aix to Paris, if she had been really with child ; that she would have concealed her pregnancy ; that she would have been so meanly lodged and served at Paris ; or that sir John would have forgot the names of some persons and streets he once knew. Every one refers to his own experience, when he estimates probability ; and the judgments of mankind will vary on this point, as much as their education and way of life have varied. Had this person been made to say nothing worse than this, no one would have troubled him or his argument : indeed every event, which happens in any degree contrary to the calculation of the analyst, may in some sense be called improbable. The writer of these papers begs leave to offer but one argument in favour of the probability of the defender's story.

He has formed his journal from the depositions of many witnesses of different countries, languages, ages, and conditions in life ; of witnesses summoned indifferently on the part of the defender, or the pursuers ; from letters and records, which are above suspicion ; and from papers, which the pursuers themselves acknowledge to be true. If he has executed his plan fairly and honestly, if these different incidents thus variously collected and disposed without artifice in their proper chronological order, have appeared to form one uniform and consistent chain of facts ; this rare concurrence of so many independent circumstances into one story is the strongest presumptive argument, that the things did really happen in the manner the witnesses have represented them ; and that the whole is true.



2. The pursuers cannot form such a chronological series of facts; their proof is broken and detached, and highly improbable, not in one or two particulars, but in all.

To say nothing of the pointed characters of lady Jane and sir John Stuart, it is highly improbable, that any woman confessedly in full vigour of body, and capable of bearing children, should conceive the design of adopting a stranger's child, and disinheriting her own eventual issue. It cannot be conceived, that having such a design she would disown her marriage, as an enquiry into the child's legitimacy would at all times draw after it a critical examination of the birth. In the prosecution of such an intent she would probably adopt the mark of pregnancy most easily counterfeited, I mean a big-belly; and impose upon strangers. On the contrary, lady Jane every where concealed her pregnancy by her dress from occasional acquaintance, and trusted both her secret and the inspection of her person to two ladies of tried experience and unexceptionable honour. It is impossible, that she should have denied her marriage to one person several months after she had given out to other people, that she was with child—that she should have commenced this scheme in November 1747, when there was not the least prospect of getting to the only place, where it is alledged the crime could have been committed—that she should have requested lord Crawford to procure passes for her to go to Geneva, and borrowed his horses and servants to attend her there;—and that she should have pressed lady Wigton's whole family and her own foreign servant to go with her, and be witnesses of her actions.—It is improbable, that lady Jane would have gone out of her way at a great expence to expose her person at Rheims, where she was afterwards to settle, if any imposture had been then planned. It is incredible, that the maids would have been left behind, or that Mrs. Hewit would have written the letters which appear in process to these maids, had they been accomplices.

The pursuers once asserted that lady Jane left Mr. Godefroi's on the 8th of July, because if she had continued to lodge with the agent of Rheims on the day assigned for the delivery, the whole plot had been easily detected. They now assert, that she was actually in that house on the 10th of July, in defiance of their own just reasoning. They desire us to believe, that Mr. Godefroi, who can fill up no other blank article in his book, has had the singular good fortune to assist them in their want, and point out beyond contradiction that one article, which relates to sir John Stewart.

The

The conduct of sir John and lady Jane subsequent to the 10th of July can never be explained on the supposition of an imposture. Is it credible, that sir John Stewart would have left that deep retirement, to which the eye of the pursuers agents has never penetrated, and given his name under his own hand at an hotel garni almost on the very day he had committed a capital crime? Is it credible, that lady Jane, if there had been no real delivery, would have neglected to parade with the forms of one? Is it likely, that they would have accepted a stranger nurse from a public hotel; suffered that woman to lead them to a place, where she had many acquaintance and they had none; and loitered more than seventeen months in the jurisdiction of the parliament of Paris under the fears and terrors of a discovery?

What follows is still more incredible. It is said, that having successfully escaped enquiry for the first offence, and being in secure possession of as strong and healthy a child as they could wish, they chose without any possible utility, and after the duke of Douglas had withdrawn lady Jane's annuity from her, and they were reduced to the greatest want and distress, to run the same risk a second time; that they ventured to describe to all their acquaintance a second child, told to whose care he was left, and desired their friends to go and see him and report to them how he did, when they had but one in their possession; that they obtained this child in less time than they had got the first; and that this child answered in every minute particular the descriptions they had given of him, and was the very picture of lady Jane.

Guilt is watchful and always upon guard. Would sir John Stewart have forgotten the name of Le Brun, or Mrs. Hewit been without instructions, if that name had been invented? Guilt desires to rest on general facts; avoids a cross examination, and minute particulars. Would Mrs. Hewit ever have embarrassed her accounts with the adventures of milk-women and nurses, whom she could not name, if those nurses and milk-women had not been real? In short, the whole correspondence and later conduct of sir John Stewart and lady Jane; their invariable affection for the children in the midst of the most trying afflictions; in particular lady Jane's death in consequence of the loss of one of them; render the whole of the pursuers accusation the most improbable and incredible, that was ever offered to the judgment of mankind.

II. We are taught, that the story must be without inconsistencies.

Either a single witness, or an entire proof taken collectively, may be charged with inconsistency.

These



These inconsistencies may arise from voluntary confession, from inadvertency, or from a wilful design to corrupt the truth.

The two parties must be examined on these several grounds. 1. On the part of the defender there are some instances, in which the witnesses have voluntarily retracted some circumstances, to which they had deposed. The most considerable example of this kind, and indeed the only one of consequence, is contained in Mrs. Hewit's letter to Mr. Harper, wherein she says, that lady Jane left Le Brun's on account of buggs the 6th, instead of the 10th, day after her delivery. Such a conduct is doubtless some impeachment of the memory of the witness, but it does honour to her integrity. It would require judgment to determine whether the first, the second, or indeed either account given in such circumstances be strictly accurate, if the real fact had not been convincingly ascertained by letters wrote by her at the time; but there can be no doubt, that the witness meant to act honestly to the best of her knowledge.

In the large code of depositions produced by the defender there doubtless must be some instances of inconsistency, which arise from inattention. The writer of these papers has examined these depositions with all the care he could, and declares, that he has found none, which affect the proof of the pregnancy and delivery. He flatters himself that he has fully vindicated to all the world the consistency of Mrs. Hewit; that her letters and depositions speak one uniform and honest language, even on that subject, which is treated with contempt by the lofty pen of Mr. Anderson's amanuensis, *the accounts given of the nurses*.

The defender's collective proof appears entirely free from inconsistency. A few of the dates exhibited in the service are rectified by original letters and registers; and this is all the variation the proof has undergone from 1761 to 1765. There is indeed some mention made in the pursuers memorial, and in the two volumes of Mess. Almon and Anderson, of the new accoucheur of lady Jane and of the new nurse of Sholto. Whether these expressions are meant as insinuations of inconsistency, the writer of these papers cannot determine. He hopes he has already shewn, that 'till the real accoucheur and nurse appear in person, the defender remains at full liberty to exhibit as many accounts, as he can procure, of persons who have any claim to be considered in those relations to lady Jane and the child, and without any inconsistency on his part to leave all his proof before the court.

2d. On the side of the pursuers there is no witness, who has voluntarily retracted any material circumstance of his evidence.

It

It is difficult to distinguish in every case between inconsistencies which arise from inattention, and such as are founded in perjury. It is certain, that very few of the Paris and Rheims witnesses are free from inconsistencies of one or other of these kinds. The papers produced by order of the House of Lords shew, that they had once told a story very different from what they have sworn, and discredit the most necessary points of their testimony.

For example; the Mademoiselles Hibert once said, that they had observed the pregnancy; they have since sworn they did not. Mad. Michel said in 1756, that lady Jane kept her bed several days, when she first came to the hotel d'Anjou: the same person has now sent lady Jane abroad the whole day after her arrival.

This is not the time to give a list of inconsistencies; these few are mentioned in this place, because, though they are plainly calculated to serve the pursuers presumptive proof, yet they seem to have arisen from an irresolution of mind too easily overcome by popular clamour, and alarmed with the terrors of the Monitoire, and ought candidly to be distinguished from those wilful prevarications, which must be mentioned under the fourth division with which Mr. Anderson has furnished us.

Leaving therefore particular depositions, let us see whether the pursuers positive proof is consistent. It certainly is not. It is inconsistent and contradictory on the very points, on which the cause rests; the proof, that lady Jane was not at Le Brun's on the 10th of July, and that Mr. Douglas is the son of another woman.

Mr. Duruiffeau deposes to the exactness of Michel's livre d'inspecteur: this book exhibits an entry on the 8th of July, which relates to sir John Stewart and lady Jane: and it is certain, that they staid at that house from their entry to the end of the month.

Mr. Godefroi and his wife depose, that sir John Stewart and lady Jane staid at the hotel de Chalons from the 4th of July to the 14th.

Mr. Mignon and his wife, and several witnesses of better credit, assure us, that the infant Mignon was taken from his parents on Thursday July the 11th.

These several accounts form the pursuers positive proof. It is plain by intuition, that the oaths of Mr. Duruiffeau and of Mr. Godefroi cannot both be true; and the pursuers agents know very well, that if either of them be true; if sir John and lady Jane were either at Michel's or at Godefroi's on the 11th of July, the story of the Mignons cannot be applied to them.

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The pursuers do not say, that these facts came successively to their knowledge during the time the proof was taking. On the contrary, they openly avow, that they knew both Mr. Godefroi's account and Mr. Duruiffeau's before the process began. And the Mignons story was public long before the Scotch commission was opened.

The method, which the pursuers have taken to reconcile these contradictions, does as little credit to their logic as the facts themselves have done to their positive proof. 1st. They consign Mr. Duruiffeau to a perpetual oblivion. They never mention him in their memorial. 2dly. They suppose that all the Mignon witnesses, honest and dishonest, have concurred in mistaking the child's age at the time of the enlèvement; and have made him more than a third younger than he really was.

Such is the state of the pursuers direct proof! such is the indulgence they exact from the public candour! This is the evidence, and this the reasoning, by which they would condemn the memories of sir John Stewart, lady Jane, and Mrs. Hewit, to perpetual infamy; attack the security and credit of the surviving witnesses; and despoil Mr. Douglas of his fortune, his country, and his name!

III. The next quality of a good proof is, that it must be without covering or concealment.

To tell the truth, and the whole truth, are always required of an upright witness. The pretended covering and concealment of sir John and lady Jane in 1747 and 1748 do not come under this question. Their conduct at that time may render the defender's proof more or less probable, and in that light it has been already considered. The notes and other accounts, which they gave of this conduct after their return to Britain, are reputed part of the present proof: as such one is willing to admit them; and begin the examination of this property of a good proof from the time the suspicions were raised in Scotland.

1st. The change in lady Jane's conduct has, it is believed, been satisfactorily accounted for from the conference with lord Preston-grange. Our knowledge of the exact time of that change establishes the credit of Isabel Walker, the witness to that conference. Sir John Stewart was never known to refuse an answer to any question, which was asked about the birth of the children. All the occasional notes have been examined, and have been found to contain, without error or contradiction, the most material parts of that history, which has since been deposed with the utmost solemnity in this process. Some witnesses to Mrs. Hewit's table-



talk have been examined; and though these witnesses have so grossly erred in their representation of it, as to make the pursuers memorialist ashamed to use them; yet they clearly shew, that Mrs. Hewit concealed nothing, but made her French adventures the common topic of her conversation. The defender's agents in this process, it is acknowledged, have concealed nothing. Popular opinion generally says, that they have gone into a more minute examination of the conduct of sir John Stewart, than was necessary for a bare legitimate proof of the birth of Mr. Douglas.

2. Concealment and covering have been used against Mr. Douglas from the very first. Mr. Archibald Stuart, it is now owned, expressed his opinion warmly against the birth; yet he concealed this opinion, when he wrote to sir John Stewart in 1749, and when he conversed with lady Jane in 1752. Lady Jane's writings happened to be concealed. Major Cochran's original letter was concealed, till it was lost in the ruins of Douglas-Castle; and count Douglas's pretended letter, of which Mr. White of Stockbriggs informed Mr. Archibald Stuart, was concealed from the duke and every one else. Lady Jane and the children were concealed from his grace in 1753; and the duke himself was concealed from all the world till his marriage.

The concealment at Paris is notorious. Pierre Louis de La Marre was concealed for some time under the name of La Mart; and Monf. Fluratl under the more articulate denomination of Fluralt. Michel's livre d'inspecteur was concealed from Mad. Michel at her Tournelle examination; and all the books, on which the cause was to rest, were concealed from the defender's agents for more than two years and an half: and if there is any credit due to François de La Marre, Mad. La Brun is concealed from them to this day.

IV. That a story may gain credit, there ought to be no attempt by false and indirect means to support it.

This demand is strictly just; but ought no doubt to be understood with some limitations. The false and indirect means, which destroy the credit of a cause, must be such as affect it in its vital parts; must be what the old logicians called a *sine qua non*, without which it would be no cause at all. If the writer, from whom this division is borrowed, had taken his words in their strictest sense, he could not with consistency have put them into the mouth of a judge, who voted for the pursuers; for it is acknowledged by all the world, that there is direct and wilful perjury on the side of the pursuers; and yet they are suffered



to maintain both the justice of their cause, and the integrity of their agents.—It is an invidious task, but justice requires that we should bring the two proofs to this test.

1. Those who are against Mr. Douglas must and do uniformly declare, that they believe Mrs. Hewit and Isabel Walker are wilfully perjured. They cannot do otherwise, because these witnesses swear directly and pointedly of their own proper knowledge to the several incidents of the pregnancy and recovery of lady Jane Douglas: and Mrs. Hewit says, she received the children in her lap, when they came first into the world. If these witnesses have spoken the truth, it is in vain for the pursuers to plead either the mistakes or perjuries of any other witnesses adduced by Mr. Douglas.

Mrs. Hewit has been attacked from various quarters: and she has stood every assault with a resolution, which nothing but the strictest integrity could support. Her account of Mr. Andrieux's loan has been found true and exact. Her history of the several nurses, and of the various enquiries which were made to obtain a nurse who would go to Rheims, is accurate and consistent, strictly conformable to her original letters, and confirmed in every particular (except an error of four days in one date) by all that the French witnesses have said on that subject. Nor is she even contradicted on more than one, and that a negative, assertion, that lady Jane never went out from Michel's; an assertion, however carelessly expressed, which is found at last to be strictly true. In short, her three depositions are chargeable with nothing but a few trifling errors in dates, every one of which is absolutely immaterial, and which no witness could have avoided.

Such is the state of credit, in which Mrs. Hewit remains at the close of the proof. If she is free from guilt, Isabel Walker is free from suspicion. Isabel Walker has said, that she received sundry accounts from Mrs. Hewit in 1748, which were supposed by the pursuers to have been falsehoods recently invented to serve a present turn: these accounts are now known to be true. For the rest, the censure on Isabel Walker is so vague and indeterminate, that it is difficult to know, against what part of her conduct it is levelled. The memorialist and the speakers in the books of Mess. Almon and Anderson are not agreed, whether they should consider her as an original accomplice, or as a perjured witness lately retained to support the fraud. She is neither. All her accounts of what she saw are literally true, and even down to the very dates are uncommonly exact. They are confirmed by every living witness who had any access to know the incidents which she relates; by



Mad. Tewis and Mrs. Hepburn, by general Maclean, general Macelligot, and a variety of others. It has been said, that she has described the later symptoms of the pregnancy much stronger than some of the French witnesses have described them: let it be so; but let it be also remembered, that she here relates what none of the French witnesses had access to observe; even Mrs. Hewit did not see what she saw. There was but one other person in the world, who had the same daily familiarity with lady Jane's person at that time as she had; that was the other maid-servant, Effy Caw, who died before this process began. Yet it is notorious, and allowed by the pursuers themselves, that Effy Caw, though discharged and as she thought ill used by lady Jane, gave the same account of these particulars to the hour of her death, which Isabel Walker has done in this process.

These two witnesses have sworn what they severally knew, and nothing more. Did lady Jane deny her marriage to lady Catherine Wemyss? Mrs. Hewit was totally ignorant of the transaction; for she supposes, that lady Catherine knew the marriage. If sir John Stewart had any design in dating his letters from Rheims when he was at Paris, Mrs. Hewit was a stranger to it, for she dated her letters from Paris. If they all had a scheme of going to Paris, Isabel Walker was not in the secret; for she was left behind against her consent. Perhaps there is no precedent in any process, where the same facts have been supported by two witnesses so well informed and so totally distinct and independent from all influence, as these two persons; the disinterested friend and faithful servant of the greatest ornament of her sex lady Jane Douglas.

These two witnesses (the writer of these papers dare repeat it a second time) are distinct from all others, and are determinate beyond any logical opposition, which the pursuers have placed in their way. He does not mean by this assertion to screen sir John Stewart from the public eye: he is fully convinced, that sir John Stewart's conduct is the same, which he held on all other occasions; easy, natural, and unaffected: not so precise as that of younger witnesses, who had better memories; not so weak, as to afford no succour to his child. Though sir John is not a witness in process for the defender, he is by the pursuers bounty a third security for the birth-right of Mr. Douglas.

Sir John Stewart at all times and under all distresses treated the defender with the truest parental affection. When he succeeded to his own hereditary estate, he gave a remarkable instance of partiality in favour of this child: and just before his death he  
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acknowledged him as his son with the utmost solemnity of religion. He has by various little notes and memorandums, given occasionally to his friends in 1756 and 1759, preserved the names of persons and places, which Mrs. Hewit scarce ever knew, or could never have recollected; and helped the defender to preserve that series of facts, which support the credit of Mrs. Hewit, and many other witnesses to the pregnancy: in all these instances by the uniformity of his conduct, and by the perfect consistency of the several detached parts of his information, he has given an unanswerd testimony for the defender.

When this process began in December 1762, sir John was by age and infirmities unable to recollect all the minute circumstances, which the pursuers exacted from him. It is ridiculous to suppose, that they would call for sir John as their witness with any other design than to embarrass him. Yet sir John still retained in his mind the joys of that day, when Providence made him the father of two sons at a birth. The little incidents relating to that important blessing are described with the same or greater minuteness than before: for the rest, it must be remembered, that he was called from a sick bed to give evidence, when no condescendance of facts was given in by the pursuers, and consequently no counsel on the side of Mr. Douglas was prepared to avail himself of a cross-examination, to which the defender had a just right. Sir John has of course fallen into mistakes, but not such as affect the testimony of Mrs. Hewit or Isabel Walker. He has exempted them from any knowledge of Mr. La Marre. Whether he is mistaken in his account of that gentleman, is a point of no consequence to Mr. Douglas. His judgment on the letters presented to him in court can never be deduced from any thing but want of sight. A little instance of domestic craft, calculated to quiet lady Jane in her dying moments, has been heightened into an affront to a court of justice, contrary to every presumption which can be formed from the proof. Even were it to be supposed, that sir John, under the circumstances he has explained, meant to impose on the duke of Douglas, candor will oblige us to take his grace's temper into the account, and to distinguish between the design of a father to support the legitimate heir to the estate in his just rights, and those numerous attacks upon the legal state of Mr. Douglas, the administration of justice, and the public right of mankind, which must now be mentioned.

2d. The Tournelle process, and the publication of the *Monitoire*, are acknowledged by all parties to have been indirect means



to support the cause of the pursuers. The reader must judge, how far the following instances are false means.

In November 1762 Michel's book was secured by the pursuers, and some time after lodged in the Tournelle : Mr. Andrew Stuart then declared, that the entry in this book relating to sir John Stewart, dated the 8th of July 1748, was of sir John's own hand-writing ; and Mr. Duruiffeau deposed in April 1765 to a variety of particulars in support of Mr. Andrew Stuart's assertion of the authenticity of the entry, and of the credit due to it. The book has since been produced : all that Mr. Duruiffeau has sworn is known to be false ; and the entry is in the hand-writing of the maid of the house.

Application was made to Godefroi before the process began : at which time it is certain from the premiere plainte and memorials that he remembered not one syllable of the subject under enquiry. Minutes of sir John Stewart's declaration arrived in France about Christmas 1762. Mr. Godefroi was summoned twice before the Tournelle in spring 1763 : and Mr. D'Anjou has said, it was proved by this gentleman's deposition, that sir John Stewart left the hotel de Chalons on the 8th of July 1748. Mr. and Mad. Godefroi were examined in this process in May 1765, when they could not venture to say how long sir John Stewart, &c. staid in their house, but referred to an article in their household-book, which was locked up in the Tournelle. They recollected only, that the company of which they speak, paid their reckoning with intent to leave the hotel, and were detained after this discharge, till the lodgings they had hired were cleared of buggs. The same Mr. and Mad. Godefroi were examined again in July following, when they swore, in defiance of every thing that had passed, that sir John and lady Jane remained in their house till the 14th : and Mr. Godefroi adds, that he had given the pursuers the same account from the beginning. The book was produced ; and they had no other article, to which they could refer than a blank entry of unknown persons, who paid their reckoning about the middle of their residence, but never cleared off the whole, till they finally left the house.

When the story of the enlevement of Sanry's child came out in the spring 1763, the agents in this process had several conferences with the father and mother of the child, and with Legris, the woman who assisted Duvernés in one of these interviews. These people told Mr. Andrew Stuart, that the child was marked with the small-pox, and had a breast rupture at the time he was stolen.

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When the same persons appear as witnesses in process, they suppress these characteristic tokens, and swear falsely that the child had neither disease nor mark.

The Mignons are a parcel of thieves, who came forth at the call of the Monitoire to claim Mr. Douglas, as a child of the family, whom it seems they had sold. There is but one circumstance in their whole story, which deserves entire credit: the description of their child, whose person was known to too many people to admit of misrepresentation. A list of their perjuries may be found in its proper place. We know of no reward they have had for their pains, except one or two copies of a French book called the *Recueil des pieces*, presented to Mad. Mignon by Mr. Andrew Stuart's clerk.

Pierre La Marre the accoucheur, and Mad. Le Brun the landlady of lady Jane, were among the first persons, after whom enquiry was made by both parties. The pursuers in consequence of their search reported, that Mad. Le Brun was an ideal person; and that in the register of St. Cosme there was no surgeon, whose name even approached to that of La Marre, except one La Mart. In the sequel it has appeared, that this name in the register is Louis Pierre La Marre: that François, the brother of this Mr. La Marre, informed the pursuers, that his brother Pierre was connected with a Mad. Le Brun: that he concealed this information from the defender; and that he attempted to ingratiate himself with the pursuers agents by this conduct. He has since merited their further favour, by denying upon oath all knowledge of his brother's acquaintance with a woman of that name.

Mr. Gilles and Mad. Le Brun of St. Germain's, two witnesses cited by the defender, have been pleased also to forget all that knowledge of a Mad. Le Brun, which they had freely communicated to several disinterested persons not very long before they were summoned to depose in this process.

To these instances might be added a list of witnesses, whom the pursuers had prepared to depose, that the child, which was brought to Michel's as lady Jane's, must have been born two, three, or four months before the 10th of July 1748; and have since conformed themselves much nearer to the wishes of both parties: but as these people seem never to have made any distinct remarks on the child's age, it is but just to consider them rather as incompetent and prejudiced witnesses, than to give them a harsher name. Enough has been said to shew, that the essential part of the pursuers positive proof, the only part which is inconsistent with the testimony of sir John Stewart, Mrs. Hewit and Isabel Walker,



Walker, Mrs. Hepburn and Mad. Tewis, rests for its support on the credit of twelve witnesses openly convicted of the grossest perjury.

V. The method here adopted requires us now to examine, whether the two stories have been uniformly told, and uniformly maintained.

Much need not be said on this point, after what has appeared under the foregoing heads of this enquiry.

1. On the defender's side nothing is charged with a want of uniformity, but sir John Stewart's conference with Mrs. Napier, and the note which he gave to that lady. This is called the *origo mali*; but as it has fully appeared in the course of these papers, that the little information conveyed in that note is perfectly consistent with all the earlier and all the later accounts of the residence at Paris, we may rest satisfied, that the defender's proof is consistent; and that the conduct of the actors in this history, and of the agents who have stood up in its defence, has been perfectly uniform.

2. On the part of the pursuers this want of uniformity is so extremely notorious, that their present pretensions may justly be said to form a new suit entirely distinct from that, on which they set out; for excepting some indifferent assertions, which were taken from the depositions on the service, there hardly remain five articles in the whole *Condescendance of Facts*, which either are true, or which they wish should be thought true. It is needless to enumerate the several instances: the reader may find a sufficient quantity by only returning to the second, third, and fourth parts of this division.

Having thus investigated the various subjects of this quarrel in every light, in which either the recollection of the witnesses, the ingenuity of the advocates, or the opinion of those who have assumed the name of judges, have placed them; the writer of these papers forbears to draw any general conclusion. It is enough for him to have shewn, that the pursuers present argument is unworthy the protection of a man of science; that their present proof is unworthy the credit of a man of experience; and that the speeches in favour of the pursuers, imputed by Mess. Almon and Anderson to the Lords of Session, are so full of the most unaccountable mistakes in point of fact, and absurdities in point of argument, that they are unworthy the attention of any person in the world.

























